

**REPORT TO THE COMMISSIONER OF BASEBALL  
OF AN INDEPENDENT INVESTIGATION INTO  
THE ILLEGAL USE OF STEROIDS AND OTHER  
PERFORMANCE ENHANCING SUBSTANCES  
BY PLAYERS IN MAJOR LEAGUE BASEBALL**

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## TABLE OF CONTENTS

	Page
Summary and Recommendations .....	SR-1
I. Scope of this Investigation.....	1
II. Major League Baseball and Other Sports Must Combat the Illegal Use of Performance Enhancing Substances .....	4
A. Health Risks from Abuse of Steroids and Other Widely Used Performance Enhancing Substances.....	5
1. Adverse Effects of Anabolic Steroid Abuse .....	5
2. Adverse Effects of Human Growth Hormone .....	9
B. Threat to the Integrity of Baseball Posed by the Illegal Use of Performance Enhancing Substances.....	11
C. The Effects on Young Athletes.....	15
III. The Governing Laws and Baseball Policies Regarding Possession or Use of Performance Enhancing Substances .....	18
A. Laws Regarding Performance Enhancing Substances.....	18
B. Baseball’s Drug Policies Before 2002 .....	24
1. Bowie Kuhn and Baseball’s First Drug Policies.....	26
2. The Ferguson Jenkins Decision .....	29
3. Cocaine Suspensions of 1983-84.....	31
4. The 1984 Joint Drug Program.....	34
5. Drug Policies Under Peter Ueberroth .....	36
6. 1991: Fay Vincent Adds Steroids to Baseball’s Drug Policy .....	41
7. Baseball’s Drug Policies Under Bud Selig .....	42
8. 2001 Minor League Drug Prevention and Treatment Program .....	44
C. Informal Reasonable Cause Testing .....	47
D. The Joint Drug Program Under the Basic Agreement, 2002 to Present .....	50
IV. Early Indications of Steroid Use in Baseball (1988 to August 1998).....	60
V. Androstenedione and Baseball’s Broadening Awareness of the Use of Performance Enhancing Substances .....	77
VI. Incidents Providing Evidence to Baseball Officials of Players’ Possession or Use of Performance Enhancing Substances.....	86
A. Operation Equine .....	89
B. Steroids Found in Boston Red Sox Player’s Car, June 2000.....	91
C. Discovery of Steroids in Florida Marlins Player’s Locker, June 2000.....	92

## TABLE OF CONTENTS

(continued)

	<b>Page</b>
D. Shipment of Steroids to Arizona Clubhouse, September 2000.....	94
E. Canadian Border Service Seizure of Steroids in Toronto, October 2001 .....	95
F. Bullpen Catcher Admits to Supplying Steroids to Eight Major League Players, September 2002.....	99
G. Infielder Disciplined For Steroids Shipment, July 2004.....	101
H. Cooperation in Law Enforcement Investigation, Late 2004.....	103
I. Investigation Following Rafael Palmeiro’s Positive Drug Test, May 2005 .....	103
J. 50-Game Suspension of Jason Grimsley for Reported Admissions of Human Growth Hormone Use, Summer 2006.....	106
K. Procedures Followed for Players Implicated in Recent Government Investigations .....	108
L. Unreported Incidents.....	109
VII. Major League Baseball and the BALCO Investigation .....	112
A. The BALCO Raid and Grand Jury Investigation.....	112
B. Information Learned During this Investigation Concerning BALCO and Major League Baseball .....	121
1. Information About Possible Steroid Sales By Greg Anderson Before the Raid on BALCO.....	121
2. Players’ Links to Performance Enhancing Substances.....	127
VIII. Information Obtained Regarding Other Players’ Possession or Use of Steroids and Human Growth Hormone .....	138
A. Background.....	138
1. Kirk Radomski’s Cooperation .....	138
2. Radomski’s Employment with the New York Mets.....	141
3. Radomski’s Distribution of Performance Enhancing Substances to Major League Baseball Players .....	142
B. Information Regarding Purchases or Use of Performance Enhancing Substances by Players in Major League Baseball.....	145
C. Additional Information Concerning Players’ Use of Performance Enhancing Substances.....	230

## TABLE OF CONTENTS

(continued)

	<b>Page</b>
IX. The Threat Posed By Internet Sales of Steroids and Human Growth Hormone .....	234
A. Two Methods for Illegal Internet Distribution of Performance Enhancing Substances.....	234
1. Drug Dealers' Use of the Internet to Sell Illegal Performance Enhancing Substances.....	234
2. Internet Trafficking in Performance Enhancing Substances by Rejuvenation Centers and Compounding Pharmacies.....	238
B. Alleged Internet Purchases of Performance Enhancing Substances By Players in Major League Baseball .....	242
X. Review of the Major League Baseball Joint Drug Prevention and Treatment Program.....	258
A. Development of the Essential Elements of an Effective Drug Testing Program.....	259
B. Review of the Administration of the Major League Baseball Joint Drug Prevention and Treatment Program .....	263
C. Allegations of Advance Notice of Tests .....	278
1. Alleged Advance Notice of 2003 Survey Testing .....	278
2. Alleged Advance Notice During 2004 Season .....	281
XI. Recommendations.....	285
A. Recommendations for Investigation of Non-Testing Based Allegations of Performance Enhancing Substance Possession or Use.....	286
1. The Commissioner Should Establish a Department of Investigations .....	287
2. The Commissioner's Office Should More Effectively Cooperate with Law Enforcement Agencies.....	290
3. The Commissioner's Office Should Actively Use The Clubs' Powers, as Employer, to Investigate Violations of the Joint Program.....	291
4. All Clubs Should Have Clear, Written, and Well-Publicized Policies for Reporting Information Relating to Possible Performance Enhancing Substance Violations .....	292
5. Logging Packages Sent to Players at Major League Ballparks .....	294
B. Additional Actions to Address Performance Enhancing Substance Violations.....	295
C. Educational and Related Recommendations to Decrease Use of Performance Enhancing Substances .....	296

## TABLE OF CONTENTS

(continued)

	<b>Page</b>
1. The Design and Implementation of the Educational Program Should Be Centralized with the Independent Program Administrator .....	298
2. Spring Training Programs Should Include Testimonials and Other Speakers and Presentations .....	298
3. Explain the Health Risks in Context and Provide Education on Alternative Methods to Achieve the Same Results.....	300
4. Players Need to Understand the Non-Health Effects of Buying Performance Enhancing Substances from Street Dealers and “Internet Pharmacies” .....	301
5. Prominently Display Posters About Performance Enhancing Substance Use Prevention.....	302
D. Recommendations for Further Improvement of the Joint Drug Prevention and Treatment Program.....	302
1. The Program Should Be Independent.....	303
2. The Program Should Be Transparent.....	304
3. There Should Be Adequate Year-Round, Unannounced Drug Testing.....	305
4. The Program Should Be Flexible Enough to Employ Best Practices as They Develop .....	305
5. The Program Should Continue to Respect the Legitimate Rights of Players.....	306
6. The Program Should Have Adequate Funding .....	306
E. We Need to Look to the Future.....	307
XII. Conclusions.....	310
Appendices	
A. Independence of the Investigation .....	A-1
B. Process of the Investigation .....	B-1
C. Media Articles Before August 1998 .....	C-1
D. Documents Relating to Transactions Described in Chapter VIII .....	D-1

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**SUMMARY AND RECOMMENDATIONS**





## Summary and Recommendations

For more than a decade there has been widespread illegal use of anabolic steroids and other performance enhancing substances by players in Major League Baseball, in violation of federal law and baseball policy. Club officials routinely have discussed the possibility of such substance use when evaluating players. Those who have illegally used these substances range from players whose major league careers were brief to potential members of the Baseball Hall of Fame. They include both pitchers and position players, and their backgrounds are as diverse as those of all major league players.

The response by baseball was slow to develop and was initially ineffective, but it gained momentum after the adoption of a mandatory random drug testing program in 2002. That program has been effective in that detectable steroid use appears to have declined. But the use of human growth hormone has risen because, unlike steroids, it is not detectable through urine testing.

This report, the product of an intensive investigation, describes how and why this problem emerged. We identify some of the players who were caught up in the drive to gain a competitive advantage through the illegal use of these substances. Other investigations will no doubt turn up more names and fill in more details, but that is unlikely to significantly alter the description of baseball's "steroids era," as set forth in this report.

From hundreds of interviews and thousands of documents we learned enough to accurately describe that era. While this investigation was prompted by revelations about the involvement of players with the Bay Area Laboratory Co-Operative, the evidence we uncovered indicates that this has not been an isolated problem involving just a few players or a few clubs. It has involved many players on many clubs. In fact, each of the thirty clubs has had players who have been involved with performance enhancing substances at some time in their careers.

The illegal use of these substances was not limited to the players who are identified in this report. There have been many estimates of use. In 2002, former National League Most Valuable Player Ken Caminiti estimated that “at least half” of major league players were using anabolic steroids. Dave McKay, a longtime coach for the St. Louis Cardinals and the Oakland Athletics, estimated that at one time 30% of players were using them. Within the past week, the former Cincinnati Reds pitcher Jack Armstrong estimated that between 20% and 30% of players in his era, 1988 to 1994, were using large doses of steroids while an even higher percentage of players were using lower, maintenance doses of steroids. There have been other estimates, a few higher, many lower, all impossible to verify.

However, it is a fact that between 5 and 7 percent of the major league players who participated in anonymous survey testing in 2003 tested positive for performance enhancing substances. Those figures almost certainly understated the actual level of use since players knew they would be tested at some time during the year, the use of human growth hormone was not detectable in the tests that were conducted, and, as many have observed, a negative test does not necessarily mean that a player has not been using performance enhancing substances.

Mandatory random testing, formally started in 2004 after the survey testing results, appears to have reduced the use of detectable steroids, but players switched to human growth hormone precisely because it is not detectable. Players who use human growth hormone apparently believe that it assists their ability to recover from injuries and fatigue during the long baseball season; this also is a major reason why players used steroids. Human growth hormone was the substance most frequently sold to players by Kirk Radomski, a former New York Mets clubhouse employee who was a significant source of illegal performance enhancing substances until late 2005. Separately, a number of players reportedly purchased human growth hormone

through “anti-aging” centers using dubious prescriptions written by physicians who never examined, or even met, the customers for whom they were writing prescriptions.

At the beginning of this investigation, I said that I would conduct a “deliberate and unbiased examination of the facts that will comport with basic American values of fairness.” To honor that commitment, I invited each current or former player about whom allegations were received of the illegal possession or use of performance enhancing substances to meet with me so that I could inform him of the evidence supporting the allegations and give him a chance to respond. The explanations provided by those players who we did interview were taken into account and are reflected in this report.

Among current players I asked to interview were five who have spoken publicly about the issue. When I did so, I made clear that there was no suggestion that any of the five had used performance enhancing substances, and I repeat here that clarifying statement. Four of the five declined. One of them, Frank Thomas of the Toronto Blue Jays, agreed. His comments were informative and helpful.

Since 1986, drug testing has been subject to collective bargaining in Major League Baseball. For many years, citing concerns for the privacy rights of players, the Players Association opposed mandatory random drug testing of its members for steroids or other substances. On the other side of the bargaining table, the owners and several Commissioners proposed drug testing programs but gave the issue a much lower priority in bargaining than economic issues. But when the opportunity was presented in 2002 to achieve agreement on a system of mandatory random drug testing, the Commissioner pressed hard on the issue and the Players Association agreed to the basic elements of the program that is in place today.

No drug testing program is perfect. The current drug testing program in Major League Baseball is the product of the give and take inherent in collective bargaining. It appears to have reduced the use of detectable steroids but by itself has not removed the cloud of suspicion over the game. Even as this investigation was underway, developments in several government investigations exposed the depth and breadth of the continuing illegal use of these substances in baseball (and in other sports) and made clear that this problem continues, years after mandatory random testing began and stringent penalties for failing those tests were adopted.

Plainly, baseball needs to do more to effectively address this problem. I have never met or talked with Jeff Kent of the Los Angeles Dodgers, but he appears to have understood this when he said in September, as reported in several newspapers: “Major League Baseball is trying to investigate the past so they can fix the future.”

That is the purpose of the recommendations that are set forth in detail in this report. In summary, they fall into three categories: (1) Major League Baseball must significantly increase its ability to investigate allegations of use outside of the testing program and improve its procedures for keeping performance enhancing substances out of the clubhouse; (2) there must be a more comprehensive and effective program of education for players and others about the serious health risks incurred by users of performance enhancing substances; and (3) when the club owners and the Players Association next engage in collective bargaining on the joint drug program, I urge them to incorporate into the program the principles that characterize a state-of-the-art program, as described in this report.

Although I sought and received a wide range of views, including the opinions of many experts in the field, the conclusions and recommendations in this report are mine alone,

following close consultation and extensive discussions with the very talented members of the staff I assembled to assist me in this effort.<sup>1</sup>

A. The Investigation and this Report

On March 30, 2006, the Commissioner of Baseball, Allan H. (“Bud”) Selig, asked me to investigate allegations that a number of players in Major League Baseball had illegally used steroids and other performance enhancing substances. I accepted on the conditions that (1) I have total independence in conducting the investigation and in preparing this report; and (2) I have full freedom and authority to follow the evidence wherever it might lead, so that the investigation would not be limited to any one player or team. The Commissioner readily agreed. He pledged that this report, when completed, would be made public, a decision I agreed with. He promised his full support and he kept his promise.

The Commissioner retained the authority to determine whether any activities in the conduct of this investigation might violate his obligations under the Basic Agreement, including the joint drug program. I agreed to be bound by his decisions in that regard.

The Commissioner also retained the right to prohibit publication in this report of any information that he is under a legal duty to keep confidential. To enable him to make that determination, I agreed to provide his office the opportunity to review this report three business days before it was released publicly. No material changes were made as a result of that review.

I was assisted in this investigation by lawyers from the firm of DLA Piper US LLP and by several experts. They include Richard V. Clark, M.D., Ph.D., a leader in the fields

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<sup>1</sup> I personally conducted many of the interviews that form the basis for this report, but because more than 700 interviews were taken during this investigation it was not possible for me to conduct all of them. Lawyers on my staff from the law firm of DLA Piper conducted the interviews that I did not attend. In this report, I use the pronouns “I” and “we” interchangeably because its findings are based on our work collectively, under my direction.

of andrology and endocrinology and Richard H. McLaren, HBA, LL.B., LL.M., C. Arb., a professor of law at the University of Western Ontario and a distinguished arbitrator for the Court of Arbitration for Sport.<sup>2</sup>

I requested the production of relevant documents from the Commissioner's Office, each of the thirty major league clubs, and the Players Association. We received and reviewed more than 115,000 pages of documents from the Commissioner's Office and the thirty clubs and over 20,000 electronic documents that were retrieved from the computer systems of the Commissioner's Office and some of the clubs. We also gathered and reviewed many documents from other sources, some of them public.

In the course of the investigation, we interviewed more than 700 witnesses in the United States, Canada, and the Dominican Republic. Over 550 of these witnesses were current or former club officials, managers, coaches, team physicians, athletic trainers, or resident security agents. We also interviewed 16 persons from the Commissioner's Office, including Commissioner Selig, president and chief operating officer Robert DuPuy, executive vice president for labor relations Robert D. Manfred, Jr., and former senior vice president for security and facility management Kevin Hallinan.

We sought to interview as many current and former players as possible. We attempted to reach almost 500 former players. Many of them declined to be interviewed, but 68 did agree to interviews. In addition, interviews of 3 former players were arranged through the assistance of federal prosecutors and law enforcement agents.

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<sup>2</sup> Lawyers from Foley & Lardner LLP played a separate but important role as counsel for the Commissioner and Major League Baseball. Lawyers from Foley & Lardner did not participate in many of the interviews that we conducted and had no role in preparing this report other than reviewing it, as representatives of the Commissioner, three days before its release.

The Players Association was largely uncooperative. (1) It rejected totally my requests for relevant documents. (2) It permitted one interview with its executive director, Donald Fehr; my request for an interview with its chief operating officer, Gene Orza, was refused. (3) It refused my request to interview the director of the Montreal laboratory that analyzes drug tests under baseball's drug program but permitted her to provide me with a letter addressing a limited number of issues. (4) I sent a memorandum to every active player in Major League Baseball encouraging each player to contact me or my staff if he had any relevant information. The Players Association sent out a companion memorandum that effectively discouraged players from cooperating. Not one player contacted me in response to my memorandum. (5) I received allegations of the illegal possession or use of performance enhancing substances by a number of current players. Through their representative, the Players Association, I asked each of them to meet with me so that I could provide them with information about the allegations and give them a chance to respond. Almost without exception they declined to meet or talk with me.

My goal in preparing this report was to provide a thorough, accurate, and fair accounting of what I learned in this investigation about the illegal use of performance enhancing substances by players in Major League Baseball. To provide context for my conclusions and recommendations, I also include in the report the medical, legal, and historical issues that are part of this complex problem.

I have not included every allegation that we received or the results of every interview we conducted or every document we reviewed. Inevitably, much of that information was cumulative, not relevant, or of only marginal relevance. None of it would have materially altered the account that is provided.

B. The Problem Is Serious

The illegal use of performance enhancing substances poses a serious threat to the integrity of the game. Widespread use by players of such substances unfairly disadvantages the honest athletes who refuse to use them and raises questions about the validity of baseball records. In addition, because they are breaking the law, users of these substances are vulnerable to drug dealers who might seek to exploit their knowledge through threats intended to affect the outcome of baseball games or otherwise.

The illegal use of these substances to improve athletic performance also carries with it potentially serious negative side effects on the human body. Steroid users place themselves at risk for psychiatric problems, cardiovascular and liver damage, drastic changes to their reproductive systems, musculoskeletal injury, and other problems. Users of human growth hormone risk cancer, harm to their reproductive health, cardiac and thyroid problems, and overgrowth of bone and connective tissue.

Apart from the dangers posed to the major league player himself, however, his use of performance enhancing substances encourages young athletes to use those substances. Young Americans are placing themselves at risk of serious harm. Because adolescents are already subject to significant hormonal changes, the abuse of steroids and other performance enhancing substances can have more serious effects on them than they have on adults.<sup>3</sup>

Some estimates appear to show a recent decline in steroid use by high school students; they range from 3 to 6 percent.<sup>4</sup> But even the lower figure means that hundreds of

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<sup>3</sup> See *Restoring Faith in America's Pastime: Evaluating Major League Baseball's Efforts to Eradicate Steroid Use: Hearing Before the H. Comm. on Gov't Reform*, 109<sup>th</sup> Cong. 307 (2005) (statement of Dr. Kirk Brower).

<sup>4</sup> National Institute on Drug Abuse, *Monitoring the Future: Nat'l Survey Results on Drug Use, 1975-2006*, Vol. 1, at 44 (2006); Centers for Disease Control and Prevention, *National*



thousands of high school-aged young people are still illegally using steroids. It's important to devote attention to the Major League Baseball players who illegally used performance enhancing substances. It's at least as important, perhaps even more so, to be concerned about the reality that hundreds of thousands of our children are using them. Every American, not just baseball fans, ought to be shocked into action by that disturbing truth. The recent decline is welcome, but we cannot be complacent.

Don Hooton, whose son committed suicide after abusing anabolic steroids, created the Taylor Hooton Foundation for Fighting Steroid Abuse. In 2005 congressional testimony, Mr. Hooton said:

I believe the poor example being set by professional athletes is a major catalyst fueling the high usage of steroids amongst our kids. Our kids look up to these guys. They want to do the things the pros do to be successful.

\* \* \*

Our youngsters hear the message loud and clear, and it's wrong. "If you would want to achieve your goal, it's OK to use steroids to get you there, because the pros are doing it." It's a real challenge for parents to overpower the strong message that's being sent to our children by your behavior.<sup>5</sup>

Finally, the illegal use in baseball of steroids and other performance enhancing substances victimizes the majority of players who do not use those substances. A September 2000 study by the National Center on Addiction and Substance Abuse observed that:

'Clean' athletes face three choices: (1) compete without performance-enhancing substances, knowing that they may lose to competitors with fewer scruples; (2) abandon their quest because they are unwilling to use performance-enhancing substances to achieve a decisive competitive

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*Youth Risk Behavior Survey: 1991-2003: Trends in the Prevalence of Marijuana, Cocaine and Other Illegal Drug Use* (2004).

<sup>5</sup> *Restoring Faith in America's Pastime: Evaluating Major League Baseball's Efforts to Eradicate Steroid Use: Hearing Before the H. Comm. on Gov't Reform, 109<sup>th</sup> Cong. 307* (2005) (statement of Donald M. Hooton, president & director, Taylor Hooton Foundation).

advantage; or (3) use performance-enhancing substances to level the playing field.<sup>6</sup>

We heard from many former players who believed it was grossly unfair that some players were using performance enhancing substances to gain an advantage. One former player told us that one of the “biggest complaints” among players was that a “guy is using steroids and he is taking my spot.”

C. Governing Laws and Major League Baseball Policies

Anabolic steroids are listed as controlled substances under the federal Controlled Substances Act. Since 2004, the dietary supplement androstenedione and other steroid precursors have been as well. That means that it is illegal to use or possess steroids or steroid precursors without a valid physician’s prescription. Violations of this law carry penalties similar to those applicable to the illegal use or possession of narcotics. Human growth hormone is a prescription medication. It is illegal to issue a prescription for human growth hormone except for very limited purposes. Human growth hormone never has been approved for cosmetic or anti-aging uses, or to improve athletic performance. Issuing a prescription for human growth hormone for any of these unauthorized purposes is a violation of federal law.

Many have asserted that steroids and other performance enhancing substances were not banned in Major League Baseball before the 2002 Basic Agreement. This is not accurate. Beginning in 1971 and continuing today, Major League Baseball’s drug policy has prohibited the use of any prescription medication without a valid prescription.<sup>7</sup> By implication,

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<sup>6</sup> National Center on Addiction and Substance Abuse at Columbia University, *Winning at Any Cost*, at 3 (Sept. 2000).

<sup>7</sup> See Notice No. 12, Memorandum from Major League Baseball Office of the Commissioner to Administrative Officials of Major and Minor League Ball Clubs Re: Drug Education and Prevention Program, dated Apr. 5, 1971, ¶ 9 (“Baseball must insist its personnel

this prohibition applied to steroids even before 1991, when Commissioner Fay Vincent first expressly included steroids in baseball's drug policy. Steroids have been listed as a prohibited substance under the Major League Baseball drug policy since then, although no player was disciplined for steroid use before the prohibition was added to the collective bargaining agreement in 2002.

It is also inaccurate to assert, as some have, that baseball's drug policy was not binding on players before it was added to the collective bargaining agreement. Many players were suspended for drug offenses before 2002, even though none of those suspensions related to the use of steroids or other performance enhancing substances. Some suspensions were reduced in grievance arbitrations brought by the Players Association, but no arbitrator ever has questioned the authority of the Commissioner to discipline players for "just cause" based on their possession, use, or distribution of prohibited drugs.

For many years before 2002, the Players Association opposed any drug program that included mandatory random testing, despite several proposals for such a program from different Commissioners. The early disagreements on this issue centered around testing for cocaine and other "recreational" drugs, not steroids, but the effect of the Players Association's opposition was to delay the adoption of mandatory random drug testing in Major League Baseball for nearly 20 years.

However, opposition by the Players Association was not the only reason that mandatory random drug testing was not adopted. In 1994, Commissioner Selig and the club owners proposed a drug program that would have included some forms of testing and would have listed steroids among baseball's prohibited substances. Robert D. Manfred, Jr., who is now

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comply with the federal and state drug laws. It is your obligation to be familiar with these drug laws.").

executive vice president for labor relations in the Commissioner's Office, recalled that anabolic steroids were included in the 1994 proposal to be proactive, and the decision to include steroids in the proposal was not based on any particular concern about the use of those substances in baseball at that time. He acknowledged that at the time the drug program was not as high a priority as economic issues.

The Players Association did not agree to the proposal. Officials of the Players Association said that the clubs did not appear to regard the 1994 proposal as a high priority and did not pursue its adoption vigorously. Indeed, Players Association executive director Donald M. Fehr recalled that the proposal never even reached the main bargaining table during negotiations.

Later that year, a work stoppage ended the season and resulted in the cancellation of the World Series. Play resumed in 1995 without a collective bargaining agreement, and the owners made no attempt to renew the drug program proposal when collective bargaining resumed. That bargaining resulted in an agreement that remained in effect until 2002, so the next proposal for a mandatory random drug testing program was made in those negotiations with the Players Association in early 2002.

In 2001, the Commissioner had unilaterally implemented drug testing throughout baseball's affiliated minor leagues. He used that program as the basis for his 2002 proposal to the Players Association for a major league program. The proposal included many of the elements of the current Major League Baseball joint program. Building from that proposal, the Players Association and the clubs negotiated the terms of a joint drug program as part of the 2002 Basic Agreement. For the first time, there was a program; it provided for the possibility of mandatory random drug testing of all major league players if more than 5% of players tested

positive for steroids during anonymous survey testing in 2003. After that did in fact occur, mandatory random drug testing began in Major League Baseball in 2004. That year, there were 12 undisputed positive tests for steroids. No player was suspended because the program did not provide for suspensions of first-time offenders at that time.

The Major League Baseball Joint Drug Prevention and Treatment Program has been modified twice since it originally was agreed to in 2002. In January 2005, human growth hormone (along with seventeen other compounds) was added to the list of prohibited substances. In addition, the Players Association agreed to more stringent penalties for a positive test for steroids (or similar substances) including, for the first time, a suspension of ten days for a player's first positive test. In 2005, 12 players tested positive for steroids and were suspended for ten days.

Later that year, further revisions were agreed to, including significant increases in penalties: a 50-game suspension for a first positive test; a 100-game suspension for a second positive test; and a permanent suspension for a third positive test. The penalties are unchanged since those revisions. The penalties for positive drug tests under the major league program are the strongest in major U.S. professional sports leagues.<sup>8</sup> In 2006, two players tested positive for steroids and were suspended for 50 games. In 2007, three players were suspended for 50 games each for positive steroids tests.

In addition, in June 2006 Arizona Diamondbacks pitcher Jason Grimsley was suspended for 50 games based on "non-analytic" evidence that he had violated the policy,

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<sup>8</sup> In major professional sports leagues in the United States, athletes are represented in collective bargaining by players associations. Under federal law, drug testing is a subject of collective bargaining and, in this context, requires the agreement of the players associations. That is not the case with the Olympics or other traditionally amateur sports; there the governing bodies may unilaterally impose any program of their choice.

specifically, his reported admissions to federal agents that he had used steroids and human growth hormone. In September 2007, Cincinnati Reds catcher Ryan Jorgenson also was suspended for 50 games based on non-analytic evidence that he had violated the joint program. In December 2007, two players, Jay Gibbons and Jose Guillen, were each suspended for 15 days based on non-analytic evidence of past violations of the joint program.

D. The Rise of the “Steroids Era”

Reports of steroid use in Major League Baseball began soon after the widely publicized discipline of Canadian sprinter Ben Johnson at the Summer Olympic Games in September 1988. Jose Canseco of the Oakland Athletics was the subject of the first media speculation about his use of steroids, and Boston Red Sox fans taunted him for his alleged steroids use during the 1988 American League Championship Series.

News reports about alleged steroid use in baseball grew more frequent throughout the 1990s. In 1996, after a dramatic increase in offense throughout Major League Baseball, Ken Caminiti of the San Diego Padres was voted the National League’s Most Valuable Player. In a 2002 Sports Illustrated article, he admitted that he had been using steroids that season and credited them for his increased power. In August 1998, coverage of the issue reached what seemed at the time to be a peak, when an article reported that Mark McGwire was using the then-legal steroid precursor androstenedione while chasing the single-season home run record.

With the benefit of hindsight, it is clear that baseball missed the early warning signs of a growing crisis. Then, beginning in the summer of 2000, a number of incidents involving steroids or drug paraphernalia came to the attention of club and Commissioner’s Office officials, and the Players Association. They included:

- In June 2000, state police in Boston discovered steroids and hypodermic needles in the glove compartment of a vehicle belonging to a Boston Red Sox infielder;

- Also in June 2000, a clubhouse attendant found a paper bag containing six vials of steroids and over two dozen syringes in the locker of a pitcher with the Florida Marlins;
- In mid-September 2000, a clubhouse employee discovered a bottle of steroids and several hundred diet pills in a package that had been mailed to the ballpark for an Arizona Diamondbacks infielder;
- In October 2001, officers with the Canadian Border Service discovered steroids, syringes, and other drugs in an unmarked bag that came from the entourage of a Cleveland Indians outfielder;
- In September 2002, a bullpen catcher with the Montreal Expos was arrested for trying to send marijuana back to Florida with the Florida Marlins' luggage. He later told Major League Baseball security officials that he had supplied drugs to nearly two dozen major league players, including eight players for whom he said he had procured steroids.

Further inquiries were made in the Arizona and Montreal incidents, but in some of these cases, little investigation was conducted. Almost without exception, before this investigation began active major league players were not interviewed in investigations into their alleged use of performance enhancing substances.

Instead, players under suspicion frequently were subjected to "reasonable cause" testing for steroid use. Prior to the 2002 Basic Agreement those tests were the subject of an informal arrangement between the Commissioner's Office and the Players Association that involved negotiations in each case as to whether testing of a player would be conducted and, if

so, when. As a result, when they did occur, the tests were administered long after the allegations were received, and no suspected player ever tested positive for steroids in these tests.

Commissioner Selig and Rob Manfred both recognized the flaws in “reasonable cause” testing as it was conducted during those years. In 2002, Manfred told a Senate subcommittee that the process was “ad hoc at best, and dysfunctional at worst.”<sup>9</sup> To remedy the problems, they focused their efforts on negotiating a comprehensive drug program with the Players Association which, when it was agreed to, included both mandatory random drug testing and its own formal procedure for reasonable cause testing.

More recently, the Commissioner’s Office has been more aggressive in responding to allegations of the use of steroids or other performance enhancing substances.

Examples include:

- In June 2004, a minor league athletic trainer discovered a vial of steroids in a package that had been mailed by a player on a major league 40-man roster. Manfred and his deputy investigated the incident and negotiated a resolution with the Players Association under which the player was immediately separated from his team and was required to submit to a drug test if he ever attempted to return to Major League Baseball;
- In June 2006, the Commissioner suspended Arizona Diamondbacks pitcher Jason Grimsley for 50 games based on admissions he reportedly made to federal law enforcement officers about his illegal use of performance enhancing substances.

The joint drug program did not expressly provide for a suspension under those

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<sup>9</sup> *Steroid Use in Professional Baseball and Anti-Doping Issues in Amateur Sports: Hearing Before the Subcomm. on Consumer Affairs, Foreign Commerce and Tourism of the S. Comm. on Commerce, Science and Transp.*, 107<sup>th</sup> Cong. 7 (2002).



circumstances, but as part of a later settlement the Players Association agreed that the suspension was appropriate and could be a precedent in the future;

- During 2007, the Commissioner's Office interviewed several players, and to date has suspended two of them, after news articles appeared alleging their past illegal use of performance enhancing substances.

E. The BALCO Investigation

Commissioner Selig asked me to conduct this investigation after the publication of *Game of Shadows*, a book that contained allegations about the illegal use of performance enhancing substances by major league players that were supplied by BALCO and the personal trainer Greg Anderson.

Throughout this investigation, a federal criminal investigation related to BALCO was ongoing. On November 15, 2007, former San Francisco Giants outfielder Barry Bonds was indicted for perjury and obstruction of justice based on his grand jury testimony in that investigation. The ongoing criminal investigation, and the resulting unwillingness of many participants to cooperate with me, limited my ability to gather information that was not already in the public record about the involvement of major league players with BALCO. The information that we did obtain is set forth in Chapter VII.

F. Evidence Obtained of Other Players' Possession or Use

Through the efforts of the United States Attorney's Office for the Northern District of California and federal law enforcement agencies, we obtained the cooperation of former New York Mets clubhouse employee Kirk Radomski. Radomski was interviewed by me and members of my investigative staff on four occasions, with federal law enforcement representatives participating in all interviews and his lawyer participating in three of them.

Radomski identified a large number of current or former major league players to whom he said he illegally sold steroids, human growth hormone, or other substances.

Radomski also provided me with a number of documents relating to his transactions with players in Major League Baseball, including copies of deposited checks that he retrieved from his banks, copies of some shipping labels or receipts, his telephone records for two years, and a copy of his address book in the form in which it was seized by federal agents when they executed a search warrant at his home.

We also obtained information from sources other than Radomski about players' possession or use of performance enhancing substances. These included several former major league players and two former strength and conditioning coaches, some of whom met with us voluntarily; others did so at the request of federal law enforcement officials.

As a result, we gathered sufficient evidence about their alleged illegal possession or use of performance enhancing substances to identify in this report dozens of current or former players in Major League Baseball. Each of the players was invited to meet with me to provide him with information about the allegations against him and give him an opportunity to respond.

Both pitchers and position players are named in this report. Some of those named are prominent, including winners of significant post-season awards. Many played in the World Series or in All-Star games. Others are less well known, and some had only brief careers at the major league level. The players were with clubs spread throughout Major League Baseball, as Radomski's customers referred their friends and teammates to him as they moved from club to club.

I carefully reviewed and considered all of the information we received about the purchase, possession, or use of performance enhancing substances by Major League Baseball players.

1. Kirk Radomski provided substantial information about the distribution of performance enhancing substances, and in many cases his statements were corroborated by other evidence. He did not, however, observe or participate in the use of performance enhancing substances by any player named in this report, with one exception that is described below.

The corroboration took many forms, including: (a) the admission by eleven players that Radomski had supplied them with performance enhancing substances, as he had said in our interviews of him;<sup>10</sup> (b) checks or money orders written to Radomski by some players in appropriate amounts; (c) mailing receipts for shipments of performance enhancing substances by Radomski to some players; (d) statements by other witnesses supporting the allegations of use by some players; (e) the names, addresses, and/or telephone numbers of many players were found in Radomski's seized address book; (f) telephone records showing calls between Radomski and some players; and (g) a positive drug test.

I did not include in this report the names of three players to whom Radomski said he sold performance enhancing substances: two of them because the players had retired from Major League Baseball by the time of the alleged sales; and one of them because the player admitted that he had purchased and possessed the substances but denied that he had used them and his version of events was corroborated by other credible evidence.

I interviewed Radomski four times (in June, July, October, and November 2007), three times in person, once by telephone. His personal lawyer participated in three of the

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<sup>10</sup> Two players admitted receipt and possession of illegal performance enhancing substances sold by Radomski but denied they ever used them.

interviews. Federal law enforcement officials and members of my staff participated with me in all of the interviews. No one from the Commissioner's Office, any club, or the Players Association participated in these interviews.

During each of the interviews, the law enforcement officials warned Radomski that if he made any false statements he would forfeit their commitment to recommend a more lenient sentence and he would face further criminal jeopardy. Before the interviews, Radomski had been debriefed extensively by federal prosecutors and agents. They subsequently confirmed that the information he provided to us in his interviews was consistent with the information he had previously provided to them.

2. Six players are named based on information obtained from persons other than Radomski or former major league strength and conditioning coach Brian McNamee. In each case, these allegations are supported by one or more of the following: (a) checks; (b) prior consistent statements; (c) a statement made about a player's use where the witness was a friend of the player identified and under circumstances in which the witness faced criminal exposure for making a false statement; (d) statements reporting a witness's direct observation of the player using a performance enhancing substance; (e) the player's own admission of his use.

3. Brian McNamee said that he was a direct eyewitness and participant in alleged illegal use by three players who he served as a personal trainer. I interviewed him three times (in July, October, and December 2007), once in person and twice by telephone.<sup>11</sup> His personal lawyer participated in each interview. Federal law enforcement officials and members of my staff participated with me in all of the interviews. No one from the Commissioner's Office, any club, or the Players Association participated in these interviews.

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<sup>11</sup> In addition, a member of my investigative staff interviewed him by telephone on a fourth occasion in December 2007; his personal lawyer also participated.

During each of the interviews, the law enforcement officials warned him that he faced criminal jeopardy if he made any false statements. With respect to two of the players, McNamee was acting against his financial interest in disclosing this information. Before the interviews, McNamee had been debriefed extensively by federal prosecutors and agents. They subsequently confirmed that the information he provided to us in his interviews was consistent with the information he had previously provided to them.

In some cases, I include statements by club personnel in emails or other documents commenting on a player's alleged drug use. Those statements are cited as corroboration of other evidence that a player possessed or used performance enhancing substances; they did not serve as the primary basis for any of the decisions I made. No player is identified in this report on the basis of mere suspicion or speculation.

Radomski met with many players while they were in New York, where he lives. Most of his business, however, was conducted by telephone and mail or overnight delivery. He sent drugs to their homes, to hotels, and in some cases to major league clubhouses. He was paid by check, by money order, or in cash.

Even before mandatory random drug testing began in Major League Baseball, Radomski observed players moving away from oil-based steroids that stay in the body for a long time, to water-based steroids that clear the body faster. Because human growth hormone cannot be detected in a urine test, as mandatory random drug testing was implemented many players switched to it even when they concluded that it was less effective than steroids.

A detailed discussion of Radomski's network of customers, and other players for whom evidence has been obtained of their alleged possession or use of performance enhancing substances, is provided in Chapter VIII of the report.

G. Players' Use of Substances Purchased from Anti-Aging Centers

In February 2007, a government task force executed search warrants on Signature Compounding Pharmacy in Orlando, Florida and other businesses, including several so-called "rejuvenation centers," exposing another source of illegal performance enhancing substances. Some businesses that describe themselves as anti-aging or rejuvenation centers sell steroids or human growth hormone and arrange for buyers to obtain prescriptions for those substances from corrupt or suspended physicians or even, in some cases, a dentist. The prescriptions are then filled by a compounding pharmacy affiliated with the center and delivered to the buyer either through the mail or at the "clinic."

In a series of news reports during 2007, eight active major league players and eight former players were identified as appearing in the customer records of either anti-aging clinics or compounding pharmacies that are involved in this illegal trade. Those players reportedly purchased steroids, human growth hormone, and other drugs used to counteract the effects of steroid use.

Several players mentioned in these news reports admitted that they purchased human growth hormone from an anti-aging clinic or rejuvenation center and claimed that the purchases were to treat an injury or other medical condition. The Food and Drug Administration has never approved the use of human growth hormone to treat an athletic injury, to become more lean, or to improve athletic performance. The use of human growth hormone is a violation of federal law if not for an authorized purpose, even if with a prescription. In any event, based on the news reports it is doubtful that the prescriptions were valid.

In the section of this report entitled "Alleged Internet Purchases of Performance Enhancing Substances By Players in Major League Baseball," I briefly describe alleged purchases by sixteen players. The information in that section was obtained from public sources,

primarily news articles. All of these disclosures arose out of investigations by federal and state law enforcement agencies.

H. Major League Baseball's Joint Drug Prevention and Treatment Program

The joint drug prevention and treatment program was added to the Basic Agreement in 2002. Under that program, testing has been conducted of players in Major League Baseball since 2003, first in the form of anonymous survey testing in 2003, and thereafter in mandatory random testing that now carries with it severe penalties for violations. The program has been amended formally twice since 2002 as the result of negotiations between the Commissioner and the Players Association, and other minor modifications also have been made. As a result, penalties have been increased, the list of prohibited substances has been lengthened, and some improvements in procedures have been made.

Adoption of the current program was a positive first step. The information obtained in this investigation suggests that the use of detectable steroids by players in Major League Baseball has declined but the use of human growth hormone has increased. In some respects, however, the program still falls short of current best practices in drug testing for the use of performance enhancing substances.

The drug testing programs in all sports, including the Olympics, have evolved over time through a process of trial and error, as the programs were modified to address problems and concerns. In that respect, baseball's program has been like all the others. The challenge now is to take the program to a new and higher level and to then continue the process of improvement to deal with the problems and concerns which cannot be foreseen but which inevitably will arise. Certain characteristics are now widely recognized as essential to an effective testing program. These are: independence of the program administrator; transparency

and accountability; effective, year-round, unannounced testing; adherence to best practices as they develop; due process for athletes; adequate funding; and a robust education program.

Programs based on these principles can more readily adapt to changing circumstances in the ongoing contest between athletes who compete clean and those who do not, although even the strongest program by itself cannot entirely eradicate the use of banned substances. The Major League Baseball joint drug program can be strengthened in several of these areas. Most notably, the program is not administered by a truly independent authority. Although in their latest revisions to the program the parties established an “independent program administrator,” the Commissioner’s Office and the Players Association continue to retain authority over the program administrator and other important issues.

The current program also lacks transparency, an essential attribute to demonstrate the integrity and effectiveness of the program to outside observers. Transparency is most often obtained by issuing periodic reports on a program’s operations, including reporting aggregate data on testing, and by regular audits, neither of which is now done under the joint program.

Concerns have been raised about the collection procedures used, including allegations that some players received advance notice of testing. In *Game of Shadows*, and in an earlier San Francisco Chronicle article, the authors described a surreptitious recording of a conversation that reportedly occurred in spring 2003 between Greg Anderson and an unidentified person. In that conversation, Anderson reportedly claimed that he would receive notice of upcoming tests between one and two weeks in advance. He also reportedly claimed that testing was “going to be either at the end of May or beginning of June . . .”

I could not obtain a copy of the recording or otherwise confirm that Anderson made these statements, or that he made them before late May 2003 as reported by the authors.



However, records that we obtained from the contractor who administered his tests show that Bonds was tested on May 28 and June 4, 2003. Therefore, if the report of this conversation is accurate Anderson correctly predicted the dates of testing, at least for his client Barry Bonds.

We interviewed the relevant personnel from Comprehensive Drug Testing, Inc., the company responsible for sample collection under the Major League Baseball joint drug program. Those witnesses denied that they provided advance notice of test dates to Bonds or anyone else. CDT witnesses also told us that advance notice of testing dates was never provided to Quest Diagnostics, Inc., the laboratory that processed test samples, so Quest personnel could not have been the source of advance notice to anyone else. A Quest spokesman was reported to have said the same thing in the original news article about the recording.

I also investigated other allegations that some players received advance notice of tests in 2004. In April 2004 federal agents executed search warrants on the two private firms involved in the 2003 survey testing, Comprehensive Drug Testing, Inc. and Quest Diagnostics, Inc.; the warrants sought drug testing records and samples for ten major league players connected with the BALCO investigation. In the course of those searches, the agents seized data from which they believed they could determine the identities of the major league players who had tested positive during the anonymous survey testing.

Shortly after these events, the Players Association initiated discussions with the Commissioner's Office regarding a possible suspension of drug testing while the federal investigation proceeded. Manfred said the parties were concerned at the time that test results that they believed until then raised only employment issues had now become an issue in a pending criminal investigation. Ultimately, the Commissioner's Office and the Players Association agreed to a moratorium on 2004 drug testing. While the exact date and length of this moratorium

is uncertain, and the relevant 2004 testing records have been destroyed, Manfred stated that the moratorium commenced very early in the season, prior to the testing of any significant number of players. Manfred stated that the Players Association was not authorized to advise its members of the existence of the moratorium.

According to Manfred, the moratorium lasted for a short period. For most players, drug tests then resumed. With respect to the players who the federal agents believed had tested positive during 2003 survey testing, however, the Commissioner's Office and the Players Association agreed that: (1) the Players Association would be permitted to advise those players of this fact, since that information was now in the hands of the government; (2) the testing moratorium would continue with respect to those players until the Players Association had an opportunity to notify them; and (3) the Players Association would not advise any of the players of the limited moratorium.

Sometime between mid-August and early September 2004, Manfred contacted Orza because the Players Association had not yet notified the players involved. The 2004 season was drawing to a close without those players having been tested because they remained under the moratorium. Manfred said that he pressed Orza to notify the players as soon as possible so that they could be tested. All of the players were notified by early September 2004.

A former major league player stated that in 2003 he was tested as part of the survey testing program. He said that in September 2004, Gene Orza of the Players Association told him that he had tested positive in 2003 and that he would be tested in the next two weeks. Independently, Kirk Radomski told us that this former player had earlier told him the same thing about Orza's statements shortly after the conversation between Orza and the former player

occurred. In addition, the former player Larry Bigbie told us that the same former player had told him the same thing about his conversation with Orza.

Furthermore, according to Bigbie, in 2004 a current player admitted to Bigbie that he also had been told by a representative of the Players Association that he had tested positive for steroids in 2003.

I am not permitted to identify either the former player with whom we spoke or the current player who made the admission to Bigbie because the Commissioner's Office and the Players Association have concluded that for me to do so would violate the confidentiality provisions of the joint program.

According to the redacted affidavit filed in support of a search warrant sought for Jason Grimsley's residence, Grimsley told federal agents that he, too, was informed that he had tested positive for anabolic steroids in 2003. The identity of the person who so advised Grimsley is redacted in the public version of the affidavit, and I did not have access to the unredacted version.<sup>12</sup>

Other players may have received similar notice, since (1) the program required that each player be tested once during the 2004 season, (2) the Commissioner's Office and the Players Association agreed that, since the government had the names of the players who they believed had tested positive in 2003, those players should be notified and should not be tested in 2004 until that notification had taken place, and (3) that notification did not take place until late August or early September 2004, just weeks before the season ended.

Orza declined my request for an interview.

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<sup>12</sup> Affidavit of IRS Special Agent Jeff Novitzky in Support of Search Warrant, sworn to on May 31, 2006, ¶ 16.

Officials of the Commissioner's Office emphasized that the circumstances described above represented an emergency response to an unforeseen event: a government investigation that obtained the names of players who had tested positive in the 2003 survey testing, information that the parties had agreed in advance would be anonymous. Consequently, they assert that it does not describe the normal operation of the program.

The Players Association objected to my making any reference to this matter in this report. I offered to include a statement by the Association and they provided me with the following:

Because of certain actions by the Government in 2004 (which led to litigation, much of which has been under seal), the parties were forced to confront a serious threat to the confidentiality and integrity of our program. To combat that threat, and indeed to save the credibility of our program, the parties undertook certain measures in that year only. These were not unilateral actions undertaken by the MLBPA, but actions discussed and agreed upon between the MLBPA and the Commissioner's Office. Each party was fully aware and in agreement with the steps the other was taking.

The MLBPA believes that, by publishing in this Report anything related to these subjects, Senator Mitchell and the Commissioner's Office are breaching promises of confidentiality made to the MLBPA and to its members.

#### I. Recommendations

To prevent the illegal use of performance enhancing substances in Major League Baseball, I make a series of recommendations. Some can be implemented by the Commissioner unilaterally; some are subject to collective bargaining and therefore will require the agreement of the Players Association.

The recommendations below focus on three principal areas: investigations based upon non-testing evidence; player education; and further improvements in the testing program. These recommendations are designed to work in combination with one another to more

effectively combat performance enhancing substance violations. It bears emphasis that no testing program, standing alone, is enough. Certain illegal substances are difficult or virtually impossible to detect, and law enforcement investigations of Kirk Radomski and compounding pharmacies and anti-aging clinics show that, even in this era of testing, players can continue to use performance enhancing substances while avoiding detection. Indeed, one leading expert has argued that “testing only scratches the surface.” The ability to investigate vigorously allegations of performance enhancing substance violations is an essential part of any meaningful drug prevention program.

First, the Commissioner should create a Department of Investigations, led by a senior executive who reports directly to the president of Major League Baseball, to respond promptly and aggressively to allegations of the illegal use or possession of performance enhancing substances. The success of that official will depend in part upon his interaction with law enforcement officials, who in the course of their own investigations obtain evidence of athletes’ possession or use of illegal substances that, under appropriate circumstances, can be shared with sports leagues, as recent events in both Major League Baseball and other sports have demonstrated.

The Commissioner also should strengthen existing efforts to keep illegal substances out of major league clubhouses. Given the evidence that many players have had steroids and human growth hormone shipped to them at major league ballparks, packages delivered to players through their clubs should be logged and tracked. Clubs also should be required to adopt policies to ensure that allegations of a player’s possession or use of performance enhancing substances are reported promptly to the Department of Investigations.

Second, improved educational programs about the dangers of substance use are critical to any effort to deter performance enhancing substance use. Over the last several years, the Commissioner's Office and the Players Association have made an increased effort to provide players and some club personnel with educational materials on performance enhancing substances. Some of these efforts have been effective, but we heard criticism from both former players and club personnel about the anti-steroids education programs.

Most of the educational programs we reviewed address the side effects of performance enhancing substance use and the deleterious health effects of long-term use. According to Dr. Jay Hoffman, a former professional athlete and expert in the field, discussions of health risks alone, although important, generally will not deter a player from using these substances because players who consider using performance enhancing substances do not view them as dangerous if used properly. To counter this skepticism, Dr. Hoffman proposes that education about the dangers of performance enhancing substances be combined with education on how to achieve the same results through proper training, nutrition, and supplements that are legal and safe.

Another health risk associated with performance enhancing substances is the unknown nature and origin of the substances. Players need to be aware of the risks associated with buying black market drugs.

The public outcry over the use of performance enhancing substances in professional sports has provided the substance dealer with an opportunity to exploit his relationship with a player. Those players who buy and use illegal performance enhancing substances place their livelihoods and reputations in the hands of drug dealers. Players also

should be reminded of their responsibilities as role models to young athletes, who in emulating major league players' illegal substance use will place themselves at risk.

Third, although it is clear that even the best drug testing program is, by itself, not sufficient, drug testing remains an important element of a comprehensive approach to combatting the illegal use of performance enhancing substances. In Major League Baseball, however, the Commissioner does not have the authority to act unilaterally on drug testing; the agreement of the Players Association is required. The current joint drug program is part of the Basic Agreement that was agreed to in 2006 and will remain in effect until 2011. Any changes to the program therefore must be negotiated with and agreed to by the Players Association. Neither party is obligated to agree to reopen the Basic Agreement to address the program, even though that is what happened in 2005. There is no way for me to know whether that will happen again.

In recognition of the uncertainties associated with both the timing of further action on drug testing and the position of the parties when that action does take place, I set forth in this report the principles that presently characterize a state-of-the-art drug testing program. Every program should be updated regularly to keep pace with constantly changing challenges and best practices. It will be for the clubs and the Players Association to decide when to undertake a fresh review of these issues. When they do, I urge them to incorporate into the Major League Baseball joint drug program the principles described in this report.

The program should be administered by a truly independent authority that holds exclusive authority over its structure and administration. This could be in the form of an independent expert who cannot be removed except for good cause, an independent non-profit corporation, or another structure devised and agreed to by the Players Association and the major league clubs.

The program should be transparent to the public, by allowing for periodic audits of its operations and providing regular reports of aggregate data on testing and test results. The program should include adequate year-round, unannounced testing and employ best practices as they develop. How the program achieves those objectives is best left to a truly independent administrator to decide. To ensure that he can accomplish these objectives, the program should receive sufficient funding. The program should continue to respect the legitimate privacy and due process rights of the players.

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All of these recommendations are prospective. The onset of mandatory random drug testing, the single most important step taken so far to combat the problem, was delayed for years by the opposition of the Players Association. However, there is validity to the assertion by the Players Association that, prior to 2002, the owners did not push hard for mandatory random drug testing because they were much more concerned about the serious economic issues facing baseball.

To prolong this debate will not resolve it; each side will dig in its heels even further. But it could seriously and perhaps fatally detract from what I believe to be a critical necessity: the need for everyone in baseball to work together to devise and implement the strongest possible strategy to combat the illegal use of performance enhancing substances, including the recommendations set forth in this report.

I was asked to investigate the use of performance enhancing substances by major league players and to report what I found as fairly, as accurately, and as thoroughly as I could. I have done so.



Only the Commissioner is vested with authority to take disciplinary action. Any such determination is properly for the Commissioner to make, subject to the players' right to a hearing.

I urge the Commissioner to forego imposing discipline on players for past violations of baseball's rules on performance enhancing substances, including the players named in this report, except in those cases where he determines that the conduct is so serious that discipline is necessary to maintain the integrity of the game. I make this recommendation fully aware that there are valid arguments both for and against it; but I believe that those in favor are compelling.

First, a principal goal of this investigation is to bring to a close this troubling chapter in baseball's history and to use the lessons learned from the past to prevent the future use of performance enhancing substances. While that requires us to look back, as this report necessarily does, all efforts should now be directed to the future. That is why the recommendations I make are prospective. Spending more months, or even years, in contentious disciplinary proceedings will keep everyone mired in the past.

Second, most of the alleged violations in this report are distant in time. For current players, the allegations of possession or use are at least two, and as many as nine years old. This covers a period when Major League Baseball made numerous changes in its drug policies and program: it went from limited probable cause testing to mandatory random testing; since 2002, the penalties under the program have been increased several times; human growth hormone was not included as a prohibited substance under the joint drug program until 2005. Under basic principles of labor and employment law, an employer must apply the policies in place at the time of the conduct in question in determining what, if any, discipline is appropriate.

Until 2005, there was no penalty for a first positive drug test under the joint drug program, although the Commissioner has always had the authority to impose discipline for “just cause” for evidence obtained outside of the program.<sup>13</sup>

Third, and related, more than half of the players mentioned in this report are no longer playing in Major League Baseball or its affiliated minor leagues and thus are beyond the authority of the Commissioner to impose discipline.

Fourth, I have reported what I learned. But I acknowledge and even emphasize the obvious: there is much about the illegal use of performance enhancing substances in baseball that I did not learn. There were other suppliers and there have been other users, past and present. Many of those named in this report were supplied by Kirk Radomski. Yet plainly he was not the only supplier of illegal substances to major league players. Radomski himself said that some players told him they had other sources. And the evidence demonstrates that a number of players have obtained performance enhancing substances through so-called “rejuvenation centers” using prescriptions of doubtful validity.

Fifth, the Commissioner promised, and I agreed, that the public should know what I learned from this investigation. Perhaps the most important lesson I learned is that this is a serious problem that cannot be solved by anything less than a well-conceived, well-executed, and cooperative effort by everyone involved in baseball. From my experience in Northern Ireland I learned that letting go of the past and looking to the future is a very hard but necessary step toward dealing with an ongoing problem. That is what baseball now needs.

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<sup>13</sup> It should be noted, however, that the rule that there would be no discipline for the first positive test was part of the quid pro quo for the Players Association’s agreement to mandatory random drug testing. Indeed, the Basic Agreement protects a “First Positive Test Result” from discipline but does not similarly protect the first use of steroids from discipline. The primary evidence of wrongdoing in this report was not obtained from baseball’s testing program but rather from an independent investigation.

The Commissioner should give the players the chance to make a fresh start, except where the conduct is so serious that he must act to protect the integrity of the game. This would be a tangible and positive way for him to demonstrate to the players, to the clubs, to the fans, and to the general public his desire for the cooperative effort that baseball needs to deal effectively with this problem. It also would give him a clear and convincing basis for imposing meaningful discipline for future violations.

J. Conclusions

There has been a great deal of speculation about this report. Much of it has focused on players' names: how many and which ones. After considering that issue very carefully I concluded that it is appropriate and necessary to include them in this report. Otherwise I would not have done what I was asked to do: to try to find out what happened and to report what I learned accurately, fairly, and thoroughly.

While the interest in names is understandable, I hope the media and the public will keep that part of the report in context and will look beyond the individuals to the central conclusions and recommendations of this report. In closing, I want to emphasize them:

1. The use of steroids in Major League Baseball was widespread. The response by baseball was slow to develop and was initially ineffective. For many years, citing concerns for the privacy rights of the players, the Players Association opposed mandatory random drug testing of its members for steroids and other substances. But in 2002, the effort gained momentum after the clubs and the Players Association agreed to and adopted a mandatory random drug testing program. The current program has been effective in that detectable steroid use appears to have declined. However, that does not mean that players have stopped using performance enhancing substances. Many players have shifted to human growth hormone, which is not detectable in any currently available urine test.

2. The minority of players who used such substances were wrong. They violated federal law and baseball policy, and they distorted the fairness of competition by trying to gain an unfair advantage over the majority of players who followed the law and the rules. They – the players who follow the law and the rules – are faced with the painful choice of either being placed at a competitive disadvantage or becoming illegal users themselves. No one should have to make that choice.

3. Obviously, the players who illegally used performance enhancing substances are responsible for their actions. But they did not act in a vacuum. Everyone involved in baseball over the past two decades – Commissioners, club officials, the Players Association, and players – shares to some extent in the responsibility for the steroids era. There was a collective failure to recognize the problem as it emerged and to deal with it early on. As a result, an environment developed in which illegal use became widespread.

4. Knowledge and understanding of the past are essential if the problem is to be dealt with effectively in the future. But being chained to the past is not helpful. Baseball does not need and cannot afford to engage in a never-ending search for the name of every player who ever used performance enhancing substances. The Commissioner was right to ask for this investigation and report. It would have been impossible to get closure on this issue without it, or something like it.

5. But it is now time to look to the future, to get on with the important and difficult task that lies ahead. Everyone involved in Major League Baseball should join in a well-planned, well-executed, and sustained effort to bring the era of steroids and human growth hormone to an end and to prevent its recurrence in some other form in the future. That is the

only way this cloud will be removed from the game. The adoption of the recommendations set forth in this report will be a first step in that direction.



**REPORT TO THE COMMISSIONER OF BASEBALL  
OF AN INDEPENDENT INVESTIGATION INTO  
THE ILLEGAL USE OF STEROIDS AND OTHER  
PERFORMANCE ENHANCING SUBSTANCES  
BY PLAYERS IN MAJOR LEAGUE BASEBALL**





## I. Scope of this Investigation

The powers of the Commissioner of Baseball are established by contract. The Major League Constitution is the governing agreement among the thirty major league clubs, under which the powers of the Commissioner are enumerated. Article II, section 2 of that agreement grants the Commissioner the power:

. . . [t]o investigate . . . any act, transaction or practice charged, alleged or suspected to be not in the best interests of the national game of Baseball, with authority to summon persons and to order the production of documents and in case of refusal to appear or produce, impose such penalties as are hereinafter provided.

The Commissioner also is empowered “. . . [t]o determine, after investigation, what preventive, remedial or punitive action is appropriate” against either major league clubs or individuals.<sup>14</sup>

The Commissioner’s “best interests” powers do not extend “to any matter relating to the process of collective bargaining” between the clubs and the Major League Baseball Players Association.

Because the Commissioner’s powers are granted by contract, only persons who are subject to the provisions of that agreement – those employed in Major League Baseball and affiliated organizations (such as clubs in the affiliated minor leagues) – are subject to the Commissioner’s powers. Unlike a governmental body, therefore, the Commissioner does not

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<sup>14</sup> Major League Const., Art. II, §§ 2(b), (c) (2003). The “best interests of baseball” provision is essentially unchanged from the provision under which the powers were granted to the first Commissioner of Baseball, Judge Kenesaw Mountain Landis. *See* New Major League Agreement, Art. I, § 2 (1921). For players, the permissible discipline includes temporary or permanent ineligibility, or a fine. For clubs, permissible penalties include exclusion from major league meetings, a fine of up to \$2 million or denial of certain player selection rights. For club officials, the Commissioner may levy a fine of up to \$500,000. In all cases, the Commissioner also can take “such other actions as the Commissioner may deem appropriate.” Major League Const., Art. II, § 3.

have the power to compel testimony or the production of relevant evidence from third parties, including former players.<sup>15</sup>

Acting pursuant to his enumerated powers, on March 30, 2006, Commissioner Selig appointed me to conduct an investigation:

. . . to determine, as a factual matter, whether any Major League players associated with [the Bay Area Laboratory Co-Operative] or otherwise used steroids or other illegal performance enhancing substances at any point after the substances were banned by the 2002-2006 collective bargaining agreement.<sup>16</sup>

The Commissioner said that he was prompted to ask me to conduct this investigation by the publication of the book *Game of Shadows*, which “amplified” allegations regarding the relationship between certain players and Greg Anderson, a personal trainer, and with BALCO, an enterprise whose principals were convicted of supplying illegal steroids and other substances to professional athletes in a number of sports.<sup>17</sup>

The Commissioner also acknowledged that conduct “before the effective date of the 2002 Basic Agreement” could be relevant, and he authorized me, if necessary, “to expand the investigation and to follow the evidence wherever it may lead.”<sup>18</sup> I welcomed this latitude as necessary to ensure that my findings were reached in the proper context and that I would not be required to request additional investigative authority from the Commissioner once the investigation began.<sup>19</sup>

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<sup>15</sup> The Players Association is only the bargaining representative for active major league players.

<sup>16</sup> Press Release, Major League Baseball Office of the Commissioner, Statement of Commissioner Allan H. Selig (Mar. 30, 2006).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> My investigation did not include an examination of the use of amphetamines by players in Major League Baseball. The allegedly widespread use of amphetamines in baseball, rumored

As stated above, the Commissioner's authority under the "best interests of baseball" provision does not apply to any matter "related to the process of collective bargaining." In addition, as a party to the collective bargaining agreement between the Players Association and the thirty major league clubs, the Commissioner is bound by the terms of that agreement. As will be discussed further below, the subject of drug testing for any substance has been determined by baseball arbitrators to be a mandatory subject of collective bargaining. Since the 2002 Basic Agreement, the major league clubs and the Players Association have been parties to Major League Baseball's Joint Drug Prevention and Treatment Program, which contains detailed provisions that affect the Commissioner's ability to act in some instances. Other provisions of the Basic Agreement also are implicated by an investigation of this nature, including that the Players Association receive prior notice of any request for an interview of a current major league player.

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for decades, is a problem distinct from more recent allegations that players have used steroids and other substances with anabolic or similar effects to gain an unfair competitive advantage. I was asked to examine the latter question, and I am comfortable that a thorough examination did not require me to look into the additional problems posed by amphetamines use, serious as those problems might be. Moreover, an expansion of the scope of this investigation to include amphetamines use inevitably would have increased the already significant time that was needed to complete this investigation and diluted its focus, which I believe would have hampered whatever improvements might be achieved as a result of this report.

## II. Major League Baseball and Other Sports Must Combat the Illegal Use of Performance Enhancing Substances

The illicit use of anabolic steroids and other performance enhancing substances by players in Major League Baseball is a problem that must be addressed, for a number of reasons. First, steroids, human growth hormone, and similar substances pose significant health risks to those who use them. This is especially true of illegal users, who often obtain dubious products (contaminated or otherwise) from black market sources, self-administer these substances with no medical supervision based on advice gleaned from internet sites and fellow bodybuilders, and use these substances in amounts that far exceed those that are prescribed by physicians for legitimate uses.

Second, beyond the dangerous effects on players themselves, the public perception that players in Major League Baseball use these substances contributes to their use by young athletes, who in turn cause themselves great physical harm. Adolescents might be at even greater risk of harm than adult athletes from the use of these substances because the intense hormonal changes of adolescence can exacerbate their adverse psychiatric side effects.<sup>20</sup>

Third, the illegal use of anabolic steroids, human growth hormone, and similar drugs poses a significant threat to the integrity of the game of baseball. The widespread use of these substances raises questions about the validity of records and their comparability across different eras. Because such use is in violation of law, professional baseball players who do so can place themselves in a position of vulnerability to drug dealers who might use their access and knowledge of violations of law to their own advantage, through threats intended to affect the outcome of baseball games or otherwise.

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<sup>20</sup> *Restoring Faith in America's Pastime: Evaluating Major League Baseball's Efforts to Eradicate Steroid Use: Hearing Before the H. Comm. on Gov't Reform, 109<sup>th</sup> Cong. 307 (2005)* (statement of Dr. Kirk Brower).

Finally, and very important from my perspective, the illegal use of these substances by some players is unfair to the majority of players who do not use them. These players have a right to expect a level playing field where success and advancement to the major leagues is the result of ability and hard work. They should not be forced to choose between joining the ranks of those who illegally use these substances or falling short of their ambition to succeed at the major league level.

A. Health Risks from Abuse of Steroids and Other Widely Used Performance Enhancing Substances

Anabolic steroids and human growth hormone can have serious negative effects on the human body.

1. Adverse Effects of Anabolic Steroid Abuse

The term “steroids,” when used in the context of athletic performance enhancing drugs, refers to a class of drugs more precisely known as anabolic androgenic steroids.<sup>21</sup>

Anabolic steroids are natural or synthetic versions of testosterone, the primary male sex hormone.<sup>22</sup> Steroids foster the anabolic process (muscle growth and the increase of muscle mass) and also limit catabolism (the breakdown of protein in muscle cells). As a result, steroid users can increase the muscle gain resulting from strenuous exercise and maximize the impact of a high protein diet. In addition, because of their anti-catabolic effect, steroids reduce the soreness that normally results from strenuous exercise, which allows an athlete using steroids to

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<sup>21</sup> The two primary characteristics of these drugs are (1) “anabolic” in that they induce muscle growth and increased muscle mass, and (2) “androgenic” because they promote development of male sexual characteristics. J.D. Wilson, *9 Androgen Abuse by Athletes*, *Endocrine Revs.* 181-99 (1988); *see also* Will Carroll and William L. Carroll, *The Juice: The Real Story of Baseball’s Drug Problems* 10, 14, 47-52 (Ivan R. Dee 2005).

<sup>22</sup> A.M. Matsumoto, *Clinical Use and Abuse of Androgens and Antiandrogens*, *Principles and Practice of Endocrinology and Metabolism*, 1181-1200 (Kenneth L. Becker ed., 3d ed. 2001).

exercise more frequently, even daily. At least until a given anabolic steroid loses its efficacy for the user, larger doses generally result in more rapid gains in lean muscle mass and strength<sup>23</sup>

The adverse side effects of anabolic steroids used at the levels necessary to achieve these effects can be significant, however. In part, this is because the doses of anabolic steroids typically used by athletes are much higher than those that would be prescribed for any legitimate therapeutic use, between 5 and 30 times greater than the level of testosterone naturally produced by the body.<sup>24</sup>

Advocates of illicit steroid use by athletes argue that the adverse side effects have been exaggerated, focusing their arguments on the limited clinical trial data available.<sup>25</sup> Medical ethics have prevented the scientific study of the massive doses of steroids taken by athletes using these drugs to obtain an athletic advantage.<sup>26</sup> Despite this limitation, however, there are sufficient data to conclude that there is an association between steroid abuse and significant adverse side effects.<sup>27</sup> These side effects include:

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<sup>23</sup> See S. Bhasin, et al., *The Effects of Supraphysiologic Doses of Testosterone on Muscle Size and Strength in Normal Men*, 335 *New Eng. J. of Med.* 1-7 (1996); S. Bhasin, et al., *Older Men are as Responsive as Young Men to the Anabolic Effects of Graded Doses of Testosterone on the Skeletal Muscle*, 90 *J. of Clinical Endocrinology & Metabolism* 678-88 (2005).

<sup>24</sup> J. Hoffman and N. Ratamess, *Medical Issues Associated with Anabolic Steroid Use: Are They Exaggerated?*, 5 *J. of Sports Science & Med.* 182, 183 (2006) (citing P.J. Perry, et al., *Anabolic Steroid Use in Weightlifters and Bodybuilders: An Internet Survey of Drug Utilization*, 15 *Clinical J. of Sports Med.* 326-30 (2005)).

<sup>25</sup> See, e.g., Daniel Duchaine, *Underground Steroid Handbook II* 60 (1989); W. Nathaniel Phillips, *Anabolic Reference Guide* 123 (6th ed. 1991); William Llewellyn, *Anabolics 2007* 32 (6th ed. 2007).

<sup>26</sup> See C.J. Bagatell and W.J. Bremner, *Androgens in Men – Uses and Abuses*, 334 *New Eng. J. of Med.* 707-14 (1996); Hoffman and Ratamess, *supra* note 24, at 183-84.

<sup>27</sup> For an overview of the current state-of-the-science, see Hoffman and Ratamess, *supra* note 24, at 182-93, and F. Hartgens and H. Kuipers, *Effects of Androgenic-Anabolic Steroids in Athletes*, 34(8) *Sports Med.* 513-54 (2004). For additional references related to side effects of steroid use, see Bagatell and Bremner, *supra* note 26, at 707, Matsumoto, *supra* note 22, at 1181-1200, and J.W. Lenders, et al., *Deleterious Effects of Anabolic Steroids on Serum Lipoproteins*,

- Psychiatric Effects: studies have found a strong link between steroid abuse and serious adverse psychiatric symptoms, including mania, hypomania, and severe depression. Steroid users also appear to be at higher risk of suicide, especially during withdrawal.<sup>28</sup>
- Cardiovascular Effects: anecdotal evidence suggests a possible connection between steroid abuse and heart attacks in young and middle-aged bodybuilders. Steroid abuse has been tied more definitively to adverse effects on cholesterol levels, and a connection is suspected between steroid abuse and an enlarged heart.
- Liver Damage: The use of oral anabolic steroids has been tied to liver injury, including impaired liver functionality, cholestasis (impaired bile drainage), jaundice, an elevated risk of liver tumors and liver cancer, and peliosis hepatis (the life-threatening development of blood-filled cysts in the liver). Abnormal liver function might be reversible, but recurrent use of steroids at high doses can lead to serious liver disorders in the long term.
- Harm to Reproductive System: Anabolic steroids can have significant adverse effects on the reproductive system as a result of their interference with the body's natural production of testosterone. In men, extended steroid abuse can result in hypogonadism, in which the body ceases the natural production of testosterone. Steroid abuse also can result in severe shrinkage of the testes and a reduction in

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*Blood Pressure, and Liver Function in Amateur Bodybuilders*, 9 Int'l J. of Sports Med. 19-23 (1988).

<sup>28</sup> Adolescents might be especially vulnerable because they are “already subject to normal surges of sex hormones during puberty, which are associated with expected, albeit sometimes problematic changes in mood and behavior.” *Restoring Faith in America's Pastime: Evaluating Major League Baseball's Efforts to Eradicate Steroid Use: Hearing Before the H. Comm. on Gov't Reform*, 109<sup>th</sup> Cong. 145 (2005) (statement of Dr. Kirk Brower).

sperm count to minimal levels, resulting in infertility. Even when reversible, the effects of steroid abuse on testosterone production and fertility can take many months or longer. In women, steroids suppress ovarian function and can impair fertility.

- Musculoskeletal Effects: Steroid abuse may cause stunted growth in adolescents due to the premature fusion of growth plates of the long bones in the legs and arms. There also appears to be a connection between steroid use and an increased risk of tendon tears in athletes.
- Other Adverse Effects in Men: In men, steroid abuse can cause severe acne, excess stimulation of sebaceous glands on the face and body, an increase in body hair, and acceleration of male pattern balding. Enlargement of the prostate gland can occur. In addition, gynecomastia (male breast enlargement) occurs in some male steroid abusers as the body converts excess testosterone or testosterone precursors to estrogenic compounds. Some steroid abusers take anti-estrogen drugs such as tamoxifen or raloxifene to block the effect of the excess estrogen.
- Other Adverse Effects in Women: The hormonal imbalance between estrogen and androgens caused by steroids can cause breast shrinkage, acne, facial and body hair growth, loss of scalp hair, and balding. Steroid use also causes enlargement of the larynx causing a deepening of the voice, and enlargement of the clitoris. Several of these virilizing effects can be permanent.
- Potential for Addiction: A report by the National Institute on Drug Abuse concluded that some steroid users exhibit addictive behaviors identical to symptoms of addiction to other drugs of abuse, including “withdrawal symptoms



‘such as mood swings, fatigue, restlessness, loss of appetite, insomnia, reduced sex drive, and the desire to take more steroids.’”<sup>29</sup>

## 2. Adverse Effects of Human Growth Hormone

Human growth hormone is a protein hormone produced naturally in the body by the anterior pituitary gland. It is essential for growth and development and is responsible for regulation of adult height, muscle and organ growth, and has a role in sexual development. Since 1985, it has been available in a synthetic form called recombinant human growth hormone. Human growth hormone acts primarily by stimulating the liver to produce insulin-like growth factor (IGF-1), the more potent growth stimulant. Both appear to have anabolic effects in adults in that they enhance protein synthesis and protein turnover in muscles.<sup>30</sup>

A number of studies have shown that use of human growth hormone does not increase muscle strength in healthy subjects or well-trained athletes.<sup>31</sup> Athletes who have tried human growth hormone as a training aid have reached the same conclusion. The author of one

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<sup>29</sup> 2006 Steroids Report, Steroids Working Group, United States Sentencing Commission, at 25 (Mar. 2006) (quoting Nat’l Inst. on Drug Abuse, *Anabolic Steroid Abuse*, NIH Pub. No. 00-3721, at 6 (Apr. 2000)).

<sup>30</sup> C. Ehrnborg, et al., *Supraphysiologic Growth Hormone: Less Fat, More Extracellular Fluid but Uncertain Effects on Muscles in Healthy, Active Young Adults*, 62 *Clinical Endocrinology* 449-457 (2005); J. Gibney, et al., *Growth Hormone and Testosterone Interact Positively to Enhance Protein and Energy Metabolism in Hypopituitary Men*, 289 *Am. J. of Physiology-Endocrinology & Metabolism* E266-71 (2005).

<sup>31</sup> R. Deyssig, et al., *Effect of Growth Hormone Treatment on Hormonal Parameters, Body Composition and Strength in Athletes*, 128 *Acta Endocrinologica* 313-18 (1993); K.E. Yarasheski, et al., *Effect of Growth Hormone and Resistance Exercise on Muscle Growth in Young Men*, 262 *Am. J. of Physiology-Endocrinology & Metabolism* E261-67 (1992); K.E. Yarasheski, et al., *Short-term Growth Hormone Treatment Does Not Increase Muscle Protein Synthesis in Experienced Weight Lifters*, 74 *J. of Applied Physiology* 3073-76 (1993). A more recent study concluded that high doses of growth hormone did significantly reduce body fat in young adults but did not have any effect on muscle mass. M.J. Rennie, *Claims for the Anabolic Effects of Growth Hormone: A Case of the Emperor’s New Clothes?* 37 *Brit. J. of Sports Med.* 100-05 (2003).

book targeted at steroid abusers observed that “[t]he most curious aspect of the whole situation is that I’ve never encountered any athlete using HGH to benefit from it, and all the athletes who admit to having used it will usually agree: it didn’t/doesn’t work for them.”<sup>32</sup>

The primary attraction of human growth hormone for athletes seeking performance enhancing effects appears to be that it is not detectable in any currently available drug test.<sup>33</sup> In addition, because human growth hormone stimulates growth in most body tissues, athletes use it to promote tissue repair and to recover from injury.<sup>34</sup>

As is the case with steroids, however, use of human growth hormone is associated with potentially severe adverse side effects. The most remarked upon of these are acromegaly, the overgrowth of bone and connective tissue that leads to protrusion of the jaw and eyebrow bones, and gigantism, the overgrowth of the entire body in children or adolescents. (In adults, gigantism cannot occur because growth zones in bones have sealed).<sup>35</sup> Other possible side effects include cancer, impotence in men, menstrual irregularities in women, cardiomyopathy, hypothyroidism, and arthritis.<sup>36</sup>

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<sup>32</sup> Duchaine, *Underground Steroid Handbook II*, at 74; see also Phillips, *Anabolic Reference Guide*, at 39; William Llewellyn, *Anabolics 2007* 501.

<sup>33</sup> C.M. McHugh, et al., *Challenges in Detecting the Abuse of Growth Hormone in Sport*, 51 *Clinical Chem.* 1587-93 (2005).

<sup>34</sup> M. Hedström, et al., *Positive Effects of Short-Term Growth Hormone Treatment on Lean Body Mass and BMC After Hip Fracture*, 75 *Acta Orthopaedica Scandinavica* 394-401 (2004).

<sup>35</sup> See George Fan, Comment, *Toward a Rational Drug Policy: Anabolic Steroid and Human Growth Hormone Abuse: Creating an Effective and Equitable Ergogenic Drug Policy*, 1994 *U. Chi. Legal F.* 439, 455-56 (1994) (citing H.A. Haupt, *Anabolic Steroids and Human Growth Hormone*, 21 *Am. J. of Sports Med.* 468, 471 (1993)).

<sup>36</sup> *Id.*; see Import Alert No. 66-71, Food & Drug Administration, Detention Without Physical Examination of Human Growth Hormone (HGH), also known as Somatropin (Jan. 23, 2007).

Additional risks arise from using human growth hormone that has been fabricated in compounding pharmacies, often using undiluted human growth hormone of unknown or questionable origin. Before recombinant human growth hormone was introduced, for example, HGH was derived from cadavers and some users were diagnosed with Creutzfeldt-Jakob syndrome, the human counterpart of mad-cow disease.<sup>37</sup> As with steroids, multiple use of needles to self-administer HGH carries the risk of infections with Hepatitis C, HIV, and other serious diseases.

Finally, it appears that insulin is often used by athletes in combination with human growth hormone in an attempt to achieve a synergistic effect. This can give rise to severe medical risks caused by resulting precipitous drops in glucose levels.<sup>38</sup>

B. Threat to the Integrity of Baseball Posed by the Illegal Use of Performance Enhancing Substances

In initiating this investigation, Commissioner Selig recognized that baseball “is America’s pastime because of the trust placed in this sport by its fans.” The alleged illegal use of anabolic steroids and other performance enhancing substances by players in Major League Baseball “is a matter of integrity” that calls for “an impartial, thorough review” to confront this problem head on.<sup>39</sup> Commissioner Selig’s comments in this regard echo similar sentiments expressed for decades by his predecessors as Commissioner of Baseball.

Rule 21 of the Major League Rules prohibits gambling on baseball and other acts (such as rewarding opponents) that, since the “Chicago Black Sox” scandal of 1919, have been

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<sup>37</sup> S.D. Frasier and T.P. Foley, Jr., *Creutzfeldt-Jakob Disease in Recipients of Pituitary Hormones*, 78 J. of Clinical Endocrinology & Metabolism 1277-79 (1994).

<sup>38</sup> P.H. Sonksen, *Insulin, Growth Hormone, and Sport*, 170 J. of Endocrinology 13-25 (2001).

<sup>39</sup> Press Release, Major League Baseball Office of the Commissioner, Statement of Commissioner Allan H. Selig (Mar. 30, 2006).

recognized as “cheating” that can affect the integrity of the game.<sup>40</sup> But cheating is a broader and more nuanced activity than the limited prohibitions of Rule 21 suggest. In 1987, Bart Giamatti, the former president of Yale University who served as president of the National League and later as Commissioner of Baseball, observed that:

. . . acts of cheating are intended to alter the very conditions of play to favor one person. They are secretive, covert acts that strike at and seek to undermine the basic foundation of any contest declaring the winner – that all participants play under identical rules and conditions. Acts of cheating destroy that necessary foundation and thus strike at the essence of a contest. They destroy faith in the games’ integrity and fairness; if participants and spectators alike cannot assume integrity and fairness, and proceed from there, the contest cannot in its essence exist.<sup>41</sup>

The illegal use of performance enhancing substances fits Giamatti’s definition of cheating precisely. Users of these substances act in secret, in violation of federal law, baseball policy and, since 2002, its collective bargaining agreement. It is the intention of these players to gain an advantage over other players, whether or not such an advantage actually is obtained as a result. The problem of performance enhancing substance use in baseball has shaken the faith of many baseball fans in the integrity and fairness of the contest before them and in the records that have been achieved during what has come to be known as baseball’s “steroids era.”

The well-known commentator George Will recently observed:

Drugs enhance performance by devaluing it when they unfairly alter the conditions of competition. Lifting weights and eating spinach enhance the body’s normal functioning; many chemical intrusions into the body can jeopardize the health of the body and mind, while causing both to behave abnormally.

Athletes who are chemically propelled to victory do not merely overvalue winning, they misunderstand why winning is properly valued. Professional athletes stand at an apex of achievement, but their

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<sup>40</sup> See Major League Rules, Rule 21.

<sup>41</sup> A. Bartlett Giamatti, *Decision in the Appeal of Kevin Gross*, in *A Great and Glorious Game: Baseball Writings of A. Bartlett Giamatti* 66, 72-73 (Kenneth Robson, ed., 1998).

achievements are admirable primarily because they are the products of a lonely submission to a sustained discipline of exertion. Such submission is a manifestation of good character. . . . Drugs that make sport exotic, by radical intrusions into the body, drain sport of its exemplary power by making it a display of chemistry rather than character. In fact, it becomes a display of some chemists' virtuosity and some athletes' bad character.<sup>42</sup>

Former Commissioner Fay Vincent told me that the problem of performance enhancing substances may be the most serious challenge that baseball has faced since the 1919 Black Sox scandal. The illegal use of anabolic steroids and similar substances, in Vincent's view, is "cheating of the worst sort." He believes that it is imperative for Major League Baseball to "capture the moral high ground" on the issue and, by words and deeds, make it clear that baseball will not tolerate the use of steroids and other performance enhancing drugs. Similarly, the executive director of the Players Association, Don Fehr, has said:

Simply put, [the] Major League Players Association does not condone or support use by players, or by anyone else, of any unlawful substance or condone the unlawful use of any substance legal for certain purposes . . . The use of any illegal substance is wrong.<sup>43</sup>

Illegal drug use poses practical threats to the integrity of the game, not just a moral dilemma. In attempting to come to grips with a serious epidemic of cocaine use in baseball in the 1980s, former Commissioner Peter Ueberroth identified how the integrity of baseball can be jeopardized by drug use by major league players. In a 1985 memorandum to the major league clubs implementing a revised drug policy in baseball, he wrote:

Our other principal concern is the maintenance of the integrity of the game. It is most important that all of us in Baseball and our fans have the fullest confidence in our game. Drug involvement or the suspicion of drug involvement is inconsistent with maintaining that essential goal.

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<sup>42</sup> George F. Will, *Barry Bonds' Enhancement*, Newsweek, May 21, 2007, at 82.

<sup>43</sup> *Restoring Faith in America's Pastime: Evaluating Major League Baseball's Efforts to Eradicate Steroid Use: Hearing Before the H. Comm. on Gov't Reform*, 109<sup>th</sup> Cong. 307 (2005) (statement of Donald M. Fehr, executive director & general counsel, Major League Baseball Players Association).

At whatever level, illegal drug use inevitably involves contact with criminals. In the sports world, this connection will just as inevitably involve gambling. . . . The knowledge that a player . . . uses drugs is a fact which illegal gamblers clearly want to know. Drug dealers who supply Baseball personnel can dilute a drug or combine it with other substances so as to affect performance and could ultimately place the user in a position of dependence upon both the drug and its source of supply. The results, of course, could be devastating.<sup>44</sup>

Finally, and perhaps most important, the illegal use in baseball of steroids and other performance enhancing substances victimizes the majority of players who do not use those substances. A September 2000 study by the National Center on Addiction and Substance Abuse observed that:

‘Clean’ athletes face three choices: (1) compete without performance-enhancing substances, knowing that they may lose to competitors with fewer scruples; (2) abandon their quest because they are unwilling to use performance-enhancing substances to achieve a decisive competitive advantage; or (3) use performance-enhancing substances to level the playing field.<sup>45</sup>

We heard from many former players who believed it was grossly unfair that some players were using performance enhancing substances to gain an advantage. One former player told us that one of the “biggest complaints” among players was that a “guy is using steroids and he is taking my spot.”

Another former player noted the unfairness, until 2004, that arose from the fact that minor league players were subject to mandatory random testing while players who were on the 40-man rosters of major league clubs were exempt (even if playing in the minor leagues): “Forty man [roster] guys already have all of the [major league] club advantages, and then they could use steroids . . . it was not a level playing field.”

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<sup>44</sup> Memorandum from Commissioner Peter V. Ueberroth to All Clubs Re: Baseball’s Drug Education & Prevention Program, dated May 14, 1985, at 1.

<sup>45</sup> National Center on Addiction and Substance Abuse at Columbia University, *Winning at Any Cost*, at 3 (Sept. 2000).

As the former player Todd Zeile told USA Today in a 2002 article discussing the prevalence of steroids in the game at that time:

The sad part is that the issues I hear discussed are whether (using steroids) is taking away from the level playing field or whether there are long term effects to this stuff. I never hear anybody talking about the morality or the ethics or the integrity of the game. It's cheating in every sense.<sup>46</sup>

Zeile's views might be held by a largely silent majority of players. The same 2002 USA Today article reported that 79% of active players at the time were in favor of drug testing.<sup>47</sup> When survey testing was conducted in 2003 pursuant to baseball's new collective bargaining agreement, some players reportedly initially resisted submitting to drug tests because they knew that their refusal to submit to a test would be counted as a positive for steroid use and they wanted at least 5% of players surveyed to test positive so that random testing would be implemented beginning the next season.

### C. The Effects on Young Athletes

The youth of this country and other countries model their behavior after prominent athletes. "Athletes are second only to parents in the extent to which they are admired by children," yet a Kaiser Family Foundation study found that over half of the youth surveyed believed that "it is common for famous athletes to use steroids or other banned substances in order to get an edge on the competition."<sup>48</sup>

If Major League Baseball players send a message that the illegal use of performance enhancing drugs is acceptable, more young athletes will use these substances as they emulate these prominent figures. This common sense conclusion is well supported by the

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<sup>46</sup> Mel Antonen, *Steroids: Are they worth it?*, USA Today, July 8, 2002, at A1.

<sup>47</sup> *Id.*

<sup>48</sup> National Center on Addiction and Substance Abuse at Columbia University, *Winning at Any Cost*, at 2 (Sept. 2000).

facts. After the Associated Press reported in August 1998 that Mark McGwire was using androstenedione, a steroid precursor that was legal at the time, sales of that supplement increased by over 1,000%.<sup>49</sup> McGwire may not have wanted to be a role model, but he was. According to the National Institute on Drug Abuse, by 2001, 8% of male high school seniors had used andro within the prior year.<sup>50</sup>

Some estimates appear to show a recent decline in steroid use by high school students; they range from 3 to 6 percent.<sup>51</sup> But even the lower figure means that hundreds of thousands of high school-aged young people are still illegally using steroids. It's important to devote attention to the Major League Baseball players who illegally used performance enhancing substances. It's at least as important, perhaps even more so, to be concerned about the reality that hundreds of thousands of our children are using them. Every American, not just baseball fans, ought to be shocked into action by that disturbing truth. The recent decline is welcome, but we cannot be complacent.

Don Hooton, whose son committed suicide after abusing anabolic steroids, created the Taylor Hooton Foundation for Fighting Steroid Abuse. In 2005 congressional testimony, Mr. Hooton said:

I believe the poor example being set by professional athletes is a major catalyst fueling the high usage of steroids amongst our kids. Our kids look up to these guys. They want to do the things the pros do to be successful.

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<sup>49</sup> Anita Manning, *Kids: Steroids Don't Mix*, USA Today, July 9, 2002, at C1.

<sup>50</sup> National Institute on Drug Abuse, *Monitoring the Future: Nat'l Survey Results on Drug Use, 1975-2006*, Vol. 1, at 23 (2006).

<sup>51</sup> *Id.*, at 44 (2006); Centers for Disease Control and Prevention, *National Youth Risk Behavior Survey: 1991-2003: Trends in the Prevalence of Marijuana, Cocaine and Other Illegal Drug Use* (2004).



. . . our kids know that the use of anabolic steroids is high amongst professional athletes. They don't need to read Mr. Canseco's new book to know that something other than natural physical ability is providing many of you with the ability to break so many performance records that provides you with the opportunity to make those millions of dollars.

Our youngsters hear the message loud and clear, and it's wrong. "If you would want to achieve your goal, it's OK to use steroids to get you there, because the pros are doing it." It's a real challenge for parents to overpower the strong message that's being sent to our children by your behavior.<sup>52</sup>

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<sup>52</sup> *Restoring Faith in America's Pastime: Evaluating Major League Baseball's Efforts to Eradicate Steroid Use: Hearing Before the H. Comm. on Gov't Reform, 109<sup>th</sup> Cong. 307 (2005)* (statement of Donald M. Hooton, president & director, Taylor Hooton Foundation). Major League Baseball has made a contribution to the Taylor Hooton Foundation, and the Foundation runs programs at major league ballparks.

### III. The Governing Laws and Baseball Policies Regarding Possession or Use of Performance Enhancing Substances

There is a widespread misconception that the use of steroids and other performance enhancing substances, such as human growth hormone, was not prohibited in Major League Baseball before the inclusion of the joint drug program in the 2002 Basic Agreement. In fact, as early as 1991 baseball's drug policy expressly prohibited the use of "all illegal drugs and controlled substances, including steroids or prescription drugs for which the individual ... does not have a prescription."<sup>53</sup> Even before then, however, the use of any prescription drug without a valid prescription was prohibited in baseball, and even earlier under federal law. In 1971, baseball's drug policy required compliance with federal, state, and local drug laws and directed baseball's athletic trainers that anabolic steroids should only be provided to players under a physician's guidance.<sup>54</sup>

#### A. Laws Regarding Performance Enhancing Substances

Since 1938, the Federal Food, Drug, and Cosmetic Act has prohibited distribution of all prescription drugs except when a physician, based upon an individualized determination of a proper course of treatment, has authorized use of a drug by a patient under the physician's supervision.<sup>55</sup>

In 1970, in reaction to a perceived epidemic of drug abuse in the United States, Congress enacted the Controlled Substances Act, which among other things established criminal

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<sup>53</sup> Memorandum from Francis T. Vincent, Jr. to All Major League Clubs Re: Baseball's Drug Policy and Prevention Program, dated June 7, 1991, at 2.

<sup>54</sup> Memorandum from Major League Baseball Office of the Commissioner to Administrative Officials of Major League Baseball Clubs Re: Drug Education and Prevention Program, dated Apr. 5, 1971, at 2.

<sup>55</sup> Federal Food, Drug, and Cosmetic Act, c. 675, 52 Stat. 1040 (codified as amended at 21 U.S.C. § 353(b)(1)(B) (2004)).

penalties for drug offenses.<sup>56</sup> The act created five schedules of controlled substances that categorized pharmaceuticals and drugs of abuse based on their “potential for abuse, accepted medical utility, and safety of use under medical supervision.”<sup>57</sup> The categories ranged from Schedule I, which was reserved for drugs such as heroin that have “high potential for abuse,” “no currently accepted medical use,” and a “lack of accepted safety,” to Schedule V, for drugs that have a “currently accepted medical use” and a “low potential for abuse.”<sup>58</sup>

More recently, “[i]n recognition of the fact that illegal drug trafficking in anabolic steroids and human growth hormone was becoming larger in scope and presenting an ever-increasing health risk to young athletes, Congress addressed the issue with two amendments . . . , first in 1988 and then later in 1990.”<sup>59</sup> The 1988 amendment added a provision making “the distribution of anabolic steroids illegal unless (1) it was done pursuant to the order of a physician, and (2) it was for the purpose of treating a disease.”<sup>60</sup>

The 1990 amendment, called the Anabolic Steroids Control Act of 1990, imposed more stringent controls with higher criminal penalties for offenses involving the illegal

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<sup>56</sup> Comprehensive Drug Abuse Prevention and Control Act of 1970, Pub. L. No. 91-513, 84 Stat. 1236 (1970) (codified as amended in scattered sections of 21 U.S.C.); see Allan H. Selig and Robert D. Manfred, Jr., *The Regulation of Nutritional Supplements in Professional Sports*, 15 Stan. L. & Pol’y Rev. 35, 37 (2004) (citing Annalise Smith, Comment, *Marijuana as a Schedule I Substance: Political Ploy or Accepted Science?*, 40 Santa Clara L. Rev. 1137, 1146 (2000)).

<sup>57</sup> Selig & Manfred, *supra* note 56, at 37.

<sup>58</sup> 21 U.S.C. § 812 (2000); see Selig & Manfred, *supra* note 56, at 37.

<sup>59</sup> U.S. Department of Justice, United States Attorney Manual, Tit. 4, ch. 19 (Human Growth Hormone/Steroids Statutory Overview).

<sup>60</sup> *Id.*; see 1988 Anti-Drug Abuse Amendments, Pub. L. No. 100-690, 102 Stat. 4181 (1988).

distribution of anabolic steroids and human growth hormone.<sup>61</sup> That enactment reclassified anabolic steroids as Schedule III controlled substances, effectively raising penalties for their illegal possession or distribution to levels similar to those applicable to narcotics.<sup>62</sup>

In addition, the unlawful distribution of human growth hormone was classified as a felony punishable by up to five years imprisonment (or up to ten years imprisonment for distribution to individuals under the age of 18). Those penalties also applied to distribution of human growth hormone for a use other than treatment of a disease or as otherwise expressly approved by the Food and Drug Administration.<sup>63</sup> Human growth hormone has never been approved by the FDA for cosmetic, anti-aging, or athletic performance purposes.<sup>64</sup> Human growth hormone was not included with steroids as a Schedule III controlled substance, however, meaning that under current federal law, there is no criminal penalty for simple possession of HGH.<sup>65</sup> Several states have regulated human growth hormone as a controlled substance, however, under their own versions of the Controlled Substances Act.<sup>66</sup>

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<sup>61</sup> Anabolic Steroids Control Act of 1990, Pub. L. No. 101-647, 101 Stat. 4789 (1990) (codified as amended in scattered sections of 21 U.S.C.).

<sup>62</sup> Selig & Manfred, *supra* note 56, at 37 (quoting Jeffrey Hedges, Note, *The Anabolic Steroids Act: Bad Medicine for the Elderly*, 5 Elder L.J. 293, 297 (1997)).

<sup>63</sup> Pub. L. No. 101-647, 101 Stat. 4789 (1990) (codified at 21 U.S.C. § 333(e) (1992)).

<sup>64</sup> See Food and Drug Administration Import Alert No. 66-71, Detention Without Physical Examination of Human Growth Hormone (HGH), also known as Somatropin (Jan. 23, 2007). In separate law enforcement proceedings in 2007, two pharmaceutical companies agreed to settlements with federal prosecutors relating to off-label sales of human growth hormone (with a physician's prescription) for anti-aging, cosmetic, or athletic performance purposes. See Michael S. Schmidt, *Company Agrees to a Fine Over Shipments of H.G.H.*, N.Y. Times, Sept. 19, 2007, at D5 (Specialty Distribution Services, Inc. agrees to \$10.5 million fine and deferred prosecution agreement); Press Release, Pfizer Inc., Pfizer Subsidiaries Reach \$34.7 Million Settlement with DOJ (Apr. 2, 2007) (Pharmacia and Upjohn agreement to \$15 million fine and deferred prosecution agreement).

<sup>65</sup> See 21 U.S.C. § 333(f)(1); see generally George Fan, Comment, *Anabolic Steroid and Human Growth Hormone Abuse: Creating an Effective and Equitable Ergogenic Drug Policy*, 1994 U. Chi. Legal F. 439 (1994). In March 2007, Senator Charles E. Schumer introduced a bill

The 1988 and 1990 amendments did not apply to many potentially performance enhancing nutritional supplements that were considered steroid “precursors,” the most well known of which is androstenedione.<sup>67</sup> Many of these substances have anabolic effects, and possible harmful side effects, similar to those associated with regulated anabolic steroids. In 1994 Congress enacted the Dietary Supplement Health and Education Act (“DSHEA”) after the Food and Drug Administration announced that it would tighten regulation of supplements in the wake of a series of deaths that were attributed to the use of L-tryptophan, an amino acid.<sup>68</sup>

The DSHEA placed the burden on the FDA to prove that a supplement was unsafe before its sale could be prohibited.<sup>69</sup> Following the enactment of the DSHEA, supplements claiming anabolic effects that were geared toward bodybuilders and other athletes became more widely available.

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to amend the Controlled Substances Act to add human growth hormone to Schedule III under that Act. The bill has been referred to the Senate Judiciary Committee. S. 877, 110th Cong., 1st Sess. (2007).

<sup>66</sup> See, e.g., Colo. Rev. Stat. §§ 18-18-102, 18-18-205 (2007) (listing human growth hormone as an anabolic steroid); Idaho Code Ann. § 37-2709(f) (2007) (“human growth hormones” included on Schedule III); Minn. Stat. § 152.02 (2007) (“human growth hormones” included in definition of anabolic steroids); R.I. Gen. Laws § 21-28-2.08 (2007) (listing human growth hormone under Schedule III); W. Va. Code § 60A-2-208(c)(12) (2007) (listing “[h]uman growth hormones or anabolic steroids” as “depressants” under Schedule III).

<sup>67</sup> The 1990 amendments did apply to “immediate precursors” of a substance listed on Schedule III, but supplement manufacturers found ways around this prohibition. See Selig & Manfred, *supra* note 56, at 38 (discussing marketing claims for Equibolan, sold as a “legal precursor to Boldenon,” an anabolic steroid).

<sup>68</sup> Dietary Supplement Health and Education Act of 1994, Pub. L. No. 103-417, 108 Stat. 432 (1994) (codified as amended in scattered sections of 21 U.S.C.). Before the enactment of the DSHEA, dietary supplements were subject to pre-market approval by the FDA unless they qualified as a food or food additive that was generally recognized as safe, or claimed to affect the “structure and function of the body” in a way that related only to taste, aroma, or nutrition. See Selig & Manfred, *supra* note 56, at 38-40.

<sup>69</sup> Selig & Manfred, *supra* note 56, at 41 (citing 21 U.S.C. § 342(f)(1) (2000)).

In 1988, androstenedione became the subject of national attention after a reporter observed a container of the supplement in the locker of Mark McGwire of the St. Louis Cardinals during his pursuit of the single-season home run record.<sup>70</sup> The ability to purchase the substance over-the-counter became a subject of intense discussion, and that off-season Commissioner Selig and Donald Fehr, the executive director of the Players Association, agreed to co-sponsor a scientific study into androstenedione's anabolic effects.<sup>71</sup>

Further developments in professional sports also had an impact on the debate. In August 2001, Korey Stringer, a lineman with the Minnesota Vikings, died after collapsing during the team's summer workouts. Then in February 2003, Baltimore Orioles pitcher Steve Bechler died during spring training. Products containing ephedra, an amphetamine-like stimulant that could be sold over-the-counter at the time, were linked to both deaths. In late 2003, the FDA moved to regulate the sale of products containing ephedra.<sup>72</sup> By the time of Bechler's death, the agency reportedly had been compiling data required under the DSHEA to show ephedra's dangerous side effects in order to ban the substance, but it had not yet completed that work.<sup>73</sup>

As a result of these and other incidents, both Congress and the FDA increased their scrutiny of some supplements, including those, such as androstenedione, that were

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<sup>70</sup> See Steve Wilstein, *Sports Spotlight: Home-Run Derby; ROGER THAT; Legendary Season Grows with Every Prodigious Clout*, Houston Chron., Aug. 16, 1998, at Sports 1.

<sup>71</sup> See Benjamin Z. Leder, et al., *Oral Androstenedione Administration and Serum Testosterone Concentrations in Young Men*, 283 JAMA 779, 782 (2000); John Fauber, "Andro" Pill Found to Increase Testosterone Like Anabolic Steroids; Supplement May Boost Muscles, Raise Health Risks, Milwaukee J. Sentinel, Feb. 9, 2000, at 1.

<sup>72</sup> Press Release, Department of Health & Human Services, FDA Announces Plans to Prohibit Sales of Dietary Supplements Containing Ephedra (Dec. 30, 2003).

<sup>73</sup> Press Release, Food & Drug Administration, HHS Acts to Reduce Potential Risks of Dietary Supplements Containing Ephedra (Feb. 28, 2003); Stephen Smith, *FDA Proposes Warning Label for Ephedra*, Boston Globe, Mar. 1, 2003, at A1.

considered steroid precursors.<sup>74</sup> In March 2004, acting under its interpretation of a provision of the DSHEA, the FDA sent warning letters to twenty-three companies involved in selling products that included androstenedione.<sup>75</sup> In the press release announcing this action, Secretary of Health and Human Services Tommy Thompson called on Congress to amend the Controlled Substances Act to include androstenedione within the definition of restricted anabolic steroids.<sup>76</sup>

Commissioner Selig and his staff were advocates for stricter regulation of these substances. In congressional testimony in June 2002, Robert D. Manfred, Jr., the executive vice president for labor in the Commissioner's Office, described the androstenedione study that had been sponsored by Major League Baseball and the Players Association and urged Congress to revise the DSHEA to reimpose regulation on supplements like androstenedione.<sup>77</sup> In early 2004, Selig and Manfred published an article in the *Stanford Law and Policy Review* explaining the difficulties posed under baseball's joint drug program (adopted effective as of September 30, 2002) as a result of the lax regulation of supplements that were steroid precursors.<sup>78</sup>

Don Fehr also expressed the Players Association's support for governmental action to address the problem of legal steroid precursors. In June 2002 congressional testimony,

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<sup>74</sup> See Selig & Manfred, *supra* note 56, at 42-43 & n.44 (citing Press Release, Department of Health & Human Services, HHS Acts to Reduce Potential Risks of Dietary Supplements Containing Andro (Mar. 11, 2004)).

<sup>75</sup> *Id.*

<sup>76</sup> Press Release, Department of Health & Human Services, HHS Acts to Reduce Potential Risks of Dietary Supplements Containing Andro (Mar. 11, 2004).

<sup>77</sup> See *Steroid Use in Professional Baseball and Anti-Doping Issues in Amateur Sports: Hearing Before the Subcomm. on Consumer Affairs, Foreign Commerce and Tourism of the S. Comm. on Commerce, Science and Transp.*, 107<sup>th</sup> Cong. 5, 8-9 (2002) (statement of Robert D. Manfred, Jr., executive vice president for labor relations, Major League Baseball); see also Leder, et al., *supra* note 71, at 782; John Fauber, "Andro" pill found to increase testosterone like anabolic steroid; supplement may boost muscles, raise health risks, *Milwaukee J. Sentinel*, Feb. 9, 2000, at 1.

<sup>78</sup> Selig & Manfred, *supra* note 56.

Fehr noted that these substances legally could be purchased over-the-counter and that use of some legal supplements could result in positive tests for steroids, a significant issue for the Players Association in considering baseball's proposal at the time to implement mandatory random drug testing for steroids and other substances.<sup>79</sup>

In October 2004, Congress passed the Anabolic Steroid Control Act of 2004, which amended the definition of "anabolic steroid" under the Controlled Substances Act to include a number of supplements considered to be steroid precursors, including androstenedione, but not DHEA (dehydroepiandrosterone) – another steroid precursor that is closely related to androstenedione – and granted authority to the Drug Enforcement Administration to add other steroid precursors to that definition in the future.<sup>80</sup>

B. Baseball's Drug Policies Before 2002

The problem of drug abuse by players in Major League Baseball has received the attention of every Commissioner of Baseball who has served over the past four decades. In tandem with trends in American society, perceptions evolved over that period regarding the type

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<sup>79</sup> See *Steroid Use in Professional Baseball and Anti-Doping Issues in Amateur Sports: Hearing Before the Subcomm. on Consumer Affairs, Foreign Commerce and Tourism of the S. Comm. on Commerce, Science and Transp.*, 107<sup>th</sup> Cong. 25, 27, 29, 47 (2002) (statement of Donald H. Fehr, executive director, Major League Players Association). Since DSHEA was enacted, several studies have found some dietary supplements to include anabolic steroids. A study published in December 2007 reported that almost 15% of 58 sample dietary supplements contained steroids or prohormones that were not declared on the label. See C. Judkins, D. Hall, and K. Hoffman, *Investigation into Supplement Contamination Levels in the US Market*, HFL, 2007. This presents a problem for sports drug testing programs because athletes who test positive often claim that it was the result of unknowing ingestion of contaminated dietary supplements. The Commissioner's Office and the Players Association have attempted to address this problem in several ways, including (1) the development of a joint supplement certification program, (2) development of a resource exchange center to provide updated information on supplements, and (3) continued education efforts for players.

<sup>80</sup> Anabolic Steroid Control Act of 2004, Pub. L. No. 108-358, 118 Stat. 1661 (2004) (codified at 21 U.S.C. §§ 802, 811(g)); see Anne E. Kornblut & Duff Wilson, *How One Pill Escaped Place on Steroid List*, N.Y. Times, Apr. 17, 2005, at A11.



of drug abuse that required attention. Since 1971, baseball has prohibited the illegal use, possession, or distribution of drugs, including the unauthorized use of prescription drugs. Anabolic steroids have been expressly listed among baseball's prohibited substances since 1991. Until it was included in the 2002 Basic Agreement, however, this policy was not agreed to by the Players Association, which therefore retained the ability to challenge discipline decisions by the Commissioner for violations of the policy.

Unlike prohibitions on gambling, before 2002 baseball's drug policy was communicated in periodic memoranda from the Commissioner or his staff, and the drug policy was never added to the Major League Rules. Rule 21 of the Major League Rules, which bars gambling and similar activities, requires that it be posted in every major league clubhouse. Each year in spring training, representatives from the Commissioner's Office visit the training camps to remind players of the rule, and, in these presentations, read the rule in its entirety. While many witnesses had general recollections of educational programs regarding steroids and other drugs from recent years, few were aware that baseball's drug policy before 2002 expressly prohibited the use or possession of steroids without a valid prescription.

Beginning in 2002, baseball's drug policy was formally included in the collective bargaining agreement. Survey testing was conducted in 2003, and mandatory random drug testing for anabolic steroids and other prohibited substances has been part of that policy since 2004. As early as 1984, however, an informal arrangement existed under which "reasonable cause" testing of players who were suspected of involvement with drugs was arranged on a case-by-case basis through discussions between the Commissioner's Office and the Players Association; that arrangement was used for incidents of suspected steroid use beginning in the summer of 2000.

The informal approach to testing was ineffective because it resulted in significant advance notice to a player who was suspected of using drugs that he would be subject to a drug test. As a result, during negotiations with the Players Association in 2002, bargaining representatives of the owners were insistent that a more stringent drug testing program be adopted. The collectively bargained joint drug program now includes its own procedures for “reasonable cause” testing, in addition to providing for mandatory random testing.<sup>81</sup>

During the era in which the drug policy was evolving, the powers of the Commissioner of Baseball to discipline players for their involvement with drugs were also being affected by grievance arbitrations brought by the Players Association. An understanding of the context for Major League Baseball’s approach to the problem of performance enhancing substances in the game requires some understanding of the decisions in those arbitrations, which are discussed chronologically, together with the drug policies that led to them.<sup>82</sup>

#### 1. Bowie Kuhn and Baseball’s First Drug Policies

Baseball’s first written drug policy was announced by Commissioner Bowie Kuhn at the beginning of the 1971 season.<sup>83</sup> At the time, the problem of drug abuse, especially the use

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<sup>81</sup> See Major League Baseball’s Joint Drug Prevention and Treatment Program, § 3(C) (2006).

<sup>82</sup> An overview of the early efforts to eradicate drug use from Major League Baseball is provided in Glenn M. Wong & Richard J. Ensor, *Major League Baseball and Drugs: Fight the Problem or the Player?*, 11 Nova L. Rev. 779 (1987). Other articles also have addressed this history. See Mark A. Rabuano, Comment, *An Examination of Drug Testing as a Mandatory Subject of Collective Bargaining in Major League Baseball*, 4 U. Pa. J. Lab. & Empl. L. 439 (2002); Edward J. Rippey, *Contractual Freedom Over Substance-Related Issues in Major League Baseball*, 1 Sports Law. J. 143 (1994); see also Deanna Rusch, *Major League Baseball and Drug Testing*, 2 Willamette Sports L.J. (Spring 2005).

<sup>83</sup> Notice No. 12, Memorandum from Major League Baseball Office of the Commissioner to Administrative Officials of Major League Baseball Re: Drug Education and Prevention Program, dated Apr. 5, 1971.

of marijuana, had gained national attention, and Congress had just enacted the Comprehensive Drug Abuse Prevention and Control Act of 1970.<sup>84</sup>

While focusing on prevention and treatment in the first instance, baseball's original drug policy provided for the possibility of discipline for failure to comply with federal and state drug laws. Just a year earlier, pitcher Jim Bouton had published his memoir, *Ball Four*, in which he alleged that there was widespread use of amphetamines by major league players.<sup>85</sup> The 1971 drug policy memo stated that the "unprescribed possession or distribution of amphetamines or barbiturates (including 'greenies')" was a violation of law that could be the basis for discipline.

The drug policy did not expressly address the use of anabolic steroids. It stated, however, that "[b]aseball must insist its personnel comply with federal and state drug laws," and the policy placed responsibility on the individual to become familiar with those laws.<sup>86</sup> (Under federal law at the time, the use of anabolic steroids without a valid prescription was a violation of the Federal Food, Drug and Cosmetic Act.<sup>87</sup>) The drug policy advised trainers that anabolic steroids (and certain other substances) should not be dispensed without a physician's guidance.

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<sup>84</sup> Pub. L. No. 91-513, 84 Stat. 1236 (1970) (codified as amended in various sections of 21 U.S.C.).

<sup>85</sup> See Jim Bouton, *Ball Four* at 81, 157, 171, 211-12 (Wiley 1990 ed.).

<sup>86</sup> Notice No. 12, Memorandum from Major League Baseball Office of the Commissioner to Administrative Officials of Major League Baseball Re: Drug Education and Prevention Program, dated Apr. 5, 1971, at 2.

<sup>87</sup> Federal Food, Drug, and Cosmetic Act, c. 675, 52 Stat. 1040 (codified as amended at 21 U.S.C. § 353 (2004)).

Trainers also were instructed not to carry syringes or to provide injections to players under any circumstances.<sup>88</sup>

In 1973, a Congressional subcommittee announced that its staff had completed an “in depth study into the use of illegal and dangerous drugs in sports” including professional baseball. The subcommittee concluded that “the degree of improper drug use – primarily amphetamines and anabolic steroids – can only be described as alarming.” Subcommittee chairman Harley O. Staggers called on professional sports leagues to adopt “stringent penalties for illegal use, i.e., fines, suspension or even barring for life, if warranted . . . .”<sup>89</sup> In response, Commissioner Kuhn issued a statement announcing that, as a result of its education and prevention efforts, baseball had “no significant problem” with drug use, and he referred to recent private comments by chairman Staggers who reportedly “commended baseball’s drug program as the best and most effective of its kind in sports.”<sup>90</sup>

Each year from 1971 to 1985, the Commissioner or his representatives issued memoranda to major league clubs reiterating the terms of the drug prevention and education program in substantially similar form. The memorandum was revised in 1981 to require each club to create an employee assistance program and permit any employee (including any player), under certain circumstances, to seek confidential alcohol or drug information and treatment

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<sup>88</sup> Notice No. 12, Memorandum from Major League Baseball Office of the Commissioner to Administrative Officials of Major League Baseball Re: Drug Education and Prevention Program, dated Apr. 5, 1971, at Guidelines for Trainers 2.

<sup>89</sup> Press Release, Office of Congressman Harley O. Staggers (undated); *see* Norm Miller, *Drug Use in Sports Alarms*, N.Y. Daily News, May 12, 1973, at C22.

<sup>90</sup> Press Release, Major League Baseball Office of the Commissioner (May 18, 1973).

“without disclosure to management of this fact.”<sup>91</sup> Any employee who requested help for a drug or alcohol dependence problem would not be subject to discipline.<sup>92</sup> The Commissioner’s 1984 memorandum further noted that several clubs had initiated their own testing programs, expressed strong support for these efforts, and urged any clubs considering such a testing program to consult with his office.<sup>93</sup>

## 2. The Ferguson Jenkins Decision

In 1980, future Hall of Fame member Ferguson Jenkins, then a pitcher with the Texas Rangers, was arrested in Canada for possession of marijuana, hashish, and cocaine discovered by customs officials in an inspection of luggage on the team’s charter flight into Toronto. In an interview by baseball officials following his arrest, Jenkins declined to answer certain questions on the advice of his counsel.<sup>94</sup>

Commissioner Kuhn suspended Jenkins with pay because he “declined to cooperate” with the Commissioner’s investigation of the incident.<sup>95</sup> The Players Association filed a grievance challenging Jenkins’s suspension, and in the resulting decision a majority of the

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<sup>91</sup> Memorandum from Major League Baseball Office of the Commissioner to All Major League Club Chief Executives, General Managers and Team Physicians Re: Club Drug Education & Prevention Programs, dated July 2, 1981, at Tab C.

<sup>92</sup> *Id.*

<sup>93</sup> Memorandum from Bowie K. Kuhn to All Major League Clubs Re: Drug Program, dated Feb. 9, 1984, at 2.

<sup>94</sup> See *Arbitration between Major League Baseball Players Ass’n and Major League Baseball Player Relations Comm., Inc.*, Panel Decision No. 41 (Ferguson Jenkins), at 2 (Sept. 22, 1980) (“Panel Decision No. 41”).

<sup>95</sup> *Id.* at 1-2 (quoting Letter from Commissioner Bowie K. Kuhn to Ferguson Jenkins, dated Sept. 8, 1980).

panel of arbitrators rescinded it, concluding that the suspension had been without “just cause” (the owner’s representative on the arbitration panel dissented).<sup>96</sup>

The majority of the three-member arbitration panel concluded that it was unclear whether the Commissioner had suspended Jenkins due to his arrest for possession of drugs or due to his refusal to answer the Commissioner’s questions about the arrest. Neither basis, however, provided “just cause” for the suspension, in the majority’s view. The majority reasoned that “under controlling principles of United States and Canadian law – as well as fundamental rules of fair play – Jenkins must be presumed innocent until he is proven guilty.”<sup>97</sup> While there might be instances in which an employer would have the latitude to suspend an employee before trial – such as an arrest for a violent crime or “where the repellant nature of the charge, and the attendant publicity, cause realistic concerns about adverse effects on the employer’s business” – in the majority’s view Jenkins’s arrest for possession of 1.75 ounces of marijuana, 2.2 grams of hashish, and 3.0 grams of cocaine was not that type of “repellant” charge.<sup>98</sup>

The majority also concluded that Jenkins’s refusal to answer the Commissioner’s questions could not be “just cause” for the suspension because “the Commissioner was compelling Jenkins to jeopardize his defense in court” and there was “no compelling reason why the investigation into Jenkins’[s] activities could not have awaited the outcome of the trial.”<sup>99</sup>

The Jenkins decision represented the first substantial limitation on the Commissioner’s power to impose discipline on major league players and to compel a player to

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<sup>96</sup> *Id.* at 12, 16-17.

<sup>97</sup> *Id.* at 12.

<sup>98</sup> *Id.* at 13.

<sup>99</sup> *Id.* at 16-17.

cooperate with an investigation, at least when criminal charges are pending against him.<sup>100</sup> In his announcement of this investigation, Commissioner Selig alluded to the decision when he said that “an investigation of the illegal use of performance enhancing substances by a player or players is an extraordinarily difficult undertaking. . . . Arbitrators have been reluctant to allow compelled, potentially self-incriminating testimony and, unlike governmental law enforcement officials, Major League Baseball lacks the authority to grant immunity.”<sup>101</sup>

### 3. Cocaine Suspensions of 1983-84

Several further incidents in the early 1980s involving the use, possession, and, in one instance, assistance in distribution of cocaine led to a series of suspensions. While Commissioner Kuhn’s discipline of players for these incidents generally was upheld, in some cases arbitrators deemed the punishment too severe, and in one instance a suspension was overturned based on the arbitrators’ lack of confidence in the legal system of another country.

In 1983, four players with the Kansas City Royals were arrested on cocaine-related charges. Three of those players, Willie Aikens, Jerry Martin, and Willie Wilson, pleaded guilty to misdemeanor possession charges and were each sentenced to a fine and one-year

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<sup>100</sup> Although the Players Association was formed in 1954, the first collective bargaining agreement in Major League Baseball was not entered into until 1968. Baseball was not recognized to be within the jurisdiction of the National Labor Relations Board until 1969. *See American League of Prof’l Baseball Clubs, et al.*, 180 N.L.R.B. 190, 192 (1969); *see generally* Rabuano, *supra* note 82, at 440-41. The grievance and arbitration procedures were changed substantially in 1970, resulting in the basic tripartite arbitration panel that remains in effect today. *See Wong & Ensor, supra* note 82, at 782; Doug Pappas, *A Contentious History: Baseball’s Labor Fights*, espn.com, Sept. 5, 2002.

<sup>101</sup> *See, e.g.*, Press Release, Major League Baseball Office of the Commissioner, Statement of Commissioner Allan H. Selig (dated Mar. 30, 2006). Jenkins later was convicted of the charges in an Ontario court. The court expunged the charges immediately. Jenkins and Commissioner Kuhn agreed to a resolution under which Jenkins issued a public apology, agreed to participate in educational programs, and agreed to donate \$10,000 to a “suitable program for young people.” Joseph Durso, *Jenkins, Kuhn Reach Accord in Drug Case*, N.Y. Times, Feb. 7, 1981, at B29.

imprisonment (with all but three months of those sentences suspended).<sup>102</sup> In December 1983, Commissioner Kuhn suspended the three players for a year without pay, although he said that the suspensions would be reviewed on May 15, 1984 “with a view to their reinstatement” if then warranted in the Commissioner’s judgment. He also required the players to submit to drug testing during their probations.<sup>103</sup> Following a Players Association grievance filed on behalf of Martin and Wilson, the arbitrators recognized that “[t]raditional notions of industrial discipline support the conclusion that an employer may respond to drug-related misconduct with severe measures,” and concluded that “just cause” existed for a suspension. However, the panel concluded, any suspension beyond May 15, 1984 was “too severe to be squared with the just-cause requirement.”<sup>104</sup>

A fourth Royals player, pitcher Vida Blue, also was convicted, imprisoned, and fined in the Kansas City incident. Kuhn’s suspension of him for the 1984 season, followed by a two-year probationary period that included mandatory drug testing, was later upheld in

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<sup>102</sup> See *Arbitration between Comm’r of Baseball and Major League Baseball Players Ass’n*, Panel Decision No. 54 (Willie Wilson and Jerry Martin), at 1-2 (Apr. 3, 1984) (“Panel Decision No. 54”); *Arbitration between Major League Baseball Player Relations Comm., Inc. and Major League Baseball Players Ass’n*, Panel Decision No. 61 (Vida Blue), at 1-2 (July 24, 1984) (“Panel Decision No. 61”); see generally Memorandum from Barry Rona to Rep. Charles B. Rangel Re: Major League Baseball’s Response to Drug-Related Misconduct by Players, dated June 13, 1989 (“Rona Memo”), at 5; Wong & Ensor, *supra* note 82, at 785.

<sup>103</sup> Panel Decision No. 54, at 2-3; see Wong & Ensor, *supra* note 82, at 785. Los Angeles Dodgers pitcher Steve Howe received the same suspension. Howe was a repeat offender who failed two separate drug tests for cocaine during the 1983 season which were administered by the Dodgers under the club’s agreement with Howe following his treatment for cocaine abuse in a rehabilitation program. Wong & Ensor, *supra* note 82, at 785.

<sup>104</sup> See Panel Decision No. 54, at 5, 10-11. A grievance also was filed on behalf of Howe, but that matter was settled before an arbitration decision. Wong & Ensor, *supra* note 82, at 787.



arbitration, in part based on Blue's alleged involvement in assisting other players to procure drugs.<sup>105</sup>

In a separate arbitration decision issued in April 1984, the arbitrators overturned a one-month suspension of Atlanta Braves pitcher Pascual Perez that had been imposed by Commissioner Kuhn after Perez was released from a three-month imprisonment in the Dominican Republic for possession of cocaine. The panel noted the gravity of the charge for which Perez had been convicted, and recognized that drug involvement by a major league player was "not only contrary to established rules and provisions of the Uniform Players Contract, but also constitutes a 'serious and immediate threat to the business that is promoted as our National Pastime.'"<sup>106</sup> However, the arbitrators questioned whether a conviction in the courts of the Dominican Republic amounted to "persuasive" evidence of his guilt, based on a troubling recitation of the facts surrounding his coercive interrogation by police officers at the time of his arrest.<sup>107</sup>

These decisions make clear the authority of arbitrators to review and revise the severity of discipline imposed by the Commissioner using his "just cause" powers for drug violations. All of the decisions concerned drugs of abuse, principally cocaine, rather than performance enhancing substances such as anabolic steroids. The use of the drugs at issue in these decisions did not assist players to gain an unfair competitive advantage. Nevertheless, these and other decisions have affected the decisions of the Commissioner's Office and the

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<sup>105</sup> Panel Decision No. 61, at 3; *see* Wong & Ensor, *supra* note 82, at 789-90.

<sup>106</sup> *See Arbitration between Major League Baseball Players Ass'n and Comm'r of Baseball*, Panel Decision No. 58 (Pascual Perez), at 2 (Apr. 27, 1984) (quoting Panel Decision No. 54, at 8).

<sup>107</sup> *Id.* at 3-7; *see* Rona Memo. at 8.

Players Association when reacting to more recent incidents concerning a player's involvement with performance enhancing substances.<sup>108</sup>

#### 4. The 1984 Joint Drug Program

As his term neared its end, Commissioner Kuhn pressed for stronger regulation of drug use in baseball. Opinions were divided among the owners of the major league clubs, however, over whether to require mandatory random drug testing as part of such a program. The Players Association opposed mandatory random testing as “degrading” to players and a violation of their privacy, according to a report of statements by Don Fehr, who was at the time its acting executive director.<sup>109</sup>

In June 1984, the owners (through their Player Relations Committee) and the Players Association agreed to a joint program that provided for treatment of players who were found to use, or who had admitted using, certain drugs of abuse. Steroids and amphetamines were not on the schedule of prohibited substances. The program provided for drug testing of players who admitted drug use, and for players for whom there was “reason to believe” that they were using drugs. “Reason to believe” testing was permitted if a three-member panel unanimously determined that testing was warranted. There was no punishment under the program for failed drug tests, but players could be subjected to discipline if they failed to

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<sup>108</sup> In another arbitration decision handed down during the tenure of Commissioner Peter V. Ueberroth, arbitrators reduced Ueberroth's one-year suspension of San Diego Padres pitcher LaMarr Hoyt to sixty days based on Hoyt's arrest for transporting hundreds of pills of valium and propoxyphene, a muscle-relaxant/pain killer, across the border from Mexico. *See Arbitration between Major League Baseball Players Ass'n and San Diego Padres Baseball Club and Comm'r of Baseball*, Panel Decision No. 74 (LaMarr Hoyt), at 1-3, 45 (June 16, 1987). Among other things, the arbitration panel reasoned that the incident did not involve cocaine, but instead valium, which the arbitrators reasoned was “illegal only, as in this case, when it is obtained without a prescription.” *Id.* at 26, 35.

<sup>109</sup> *See* George Vecsey, *Owners Split Over Testing*, N.Y. Times, May 27, 1984, at E4. As noted above, this discussion concerned drugs of abuse, such as cocaine, not performance enhancing substances.

cooperate under the program, provided that any such discipline would be subject to the Players Association's right to file a grievance and pursue arbitration over whether it was supported by "just cause."<sup>110</sup>

In agreeing to the 1984 joint program, the Players Association opposed mandatory random testing. In a letter to the Player Relations Committee, Fehr explained that the Players Association was "skeptical of the value of such testing . . . and is concerned about infringement of constitutional rights, and rights of privacy, etc., in any program of mandatory testing." He also asserted that under applicable law the clubs were not permitted to require players to submit to urine or other testing as a condition of employment.<sup>111</sup> In the memorandum of understanding setting forth the terms of the joint program, the Players Association recited its views about testing:

The Players Association does not object, in principle, to individual, voluntary testing, on a case by case basis, provided that a player's agreement to any such test is truly voluntary, and that such agreement is not secured through coercion or pressure of any sort, and the confidentiality and integrity of the testing process can be assured . . .<sup>112</sup>

The Players Association reiterated its opposition to mandatory drug testing soon thereafter. Two clubs, the Los Angeles Dodgers and the San Francisco Giants, attempted to require drug testing as a term of new player contracts. Negotiations toward a new collective bargaining agreement were suspended until the two clubs withdrew that request and all of the

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<sup>110</sup> Memorandum of Agreement between 26 Major League Clubs and the Major League Baseball Players Association, dated May 24, 1984; Letter from Donald M. Fehr to Leland S. MacPhail, dated May 24, 1984.

<sup>111</sup> Letter from Donald M. Fehr to Leland S. MacPhail, dated May 24, 1984.

<sup>112</sup> Memorandum of Agreement between 26 Major League Clubs and the Major League Baseball Players Association, dated May 24, 1984, at 3.

clubs agreed that the joint drug program, without mandatory testing, would take the place of any such unilateral contract provision.<sup>113</sup>

The joint program was criticized by some as insufficiently rigorous, and in any event it was largely ignored. The program was terminated by the owners in October 1985, by which time only three players had submitted to its treatment and rehabilitation provisions.<sup>114</sup>

While few players were subjected to “reason to believe” drug testing under the joint program, it served as a precedent for the “reasonable cause” testing that was in effect informally thereafter until the 2002 Basic Agreement added a mandatory random drug testing program to the collective bargaining agreement.<sup>115</sup>

#### 5. Drug Policies Under Peter Ueberroth

In October 1984, Peter V. Ueberroth succeeded Bowie Kuhn as Commissioner of Baseball. Even before he began in that position, Ueberroth acknowledged that one of his primary responsibilities as the new Commissioner would be to address the problem of drug use in baseball, and today he recalls accepting the position specifically to address that issue as well as baseball’s challenging economic conditions. To Ueberroth, however, the use of anabolic steroids or similar substances was “not really on the radar” at that time.

In Ueberroth’s first full year as Commissioner, 1985, the “Pittsburgh drug trials” occurred, in which a number of major league players testified in criminal cases against Curtis

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<sup>113</sup> Wong & Ensor, *supra* note 82, at 793 (citing Murray Chass, *Baseball Settles Drug Issue*, N.Y. Times, Jan. 30, 1985, at A16).

<sup>114</sup> See Memorandum from Jennifer R. Gefsky to Robert D. Manfred, Jr. Re: 1984 Joint Drug Agreement, dated Mar. 24, 2005, at 2.

<sup>115</sup> See Letter from Donald M. Fehr to Sen. George J. Mitchell dated Nov. 30, 2007; see also Rona Memo. at 9.

Strong and Robert McCue, who were charged with selling cocaine to players.<sup>116</sup> In their testimony, several players admitted using cocaine and implicated other players. The Commissioner interviewed each of the player witnesses and other players who were named during the trials, and some were subjected to discipline.<sup>117</sup>

In May 1985, Commissioner Ueberroth established a mandatory drug testing program covering all employees in the major and minor leagues, including umpires and minor league players. The program tested for drugs of abuse and amphetamines but did not test for steroids or other performance enhancing substances. Initial positive tests were to be met with treatment rather than discipline.<sup>118</sup>

The May 1985 drug testing program did not include major league players, however. Ueberroth urged that mandatory drug testing be added to the joint drug program, which was still in effect at that time.<sup>119</sup> He recalled that the Players Association would not

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<sup>116</sup> See Associated Press, *Conviction in Drug Trial*, Sept. 27, 1985.

<sup>117</sup> According to Ueberroth, no evidence emerged during these interviews relating to the use of anabolic steroids or similar substances. The Commissioner suspended for a year those players who had engaged in a prolonged pattern of drug use and had facilitated drug sales to other players. Players for whom evidence showed some drug use but no involvement in drug distribution were suspended for sixty days. Finally, no discipline was imposed on players for whom there was little or no evidence of drug use. All of the players were subject to follow-up drug testing, and the players who were suspended could avoid suspension by performing community service and donating a portion of their 1986 salaries to a drug abuse prevention program. Rona Memo at 6; see also Wong & Ensor, *supra* note 82, at 798-804. Eventually, 21 players were disciplined. See Murray Chass, *Hernandez and Berra Consider Stances on Ruling*, N.Y. Times, Mar. 1, 1986, at Sports 7.

<sup>118</sup> See Memorandum from Peter V. Ueberroth to All Major League Clubs Re: Baseball's Drug Education and Prevention Program, dated June 18, 1985; Telex from the Commissioner's Office to Distribution List Re: Baseball Drug Education & Prevention Program, dated May 14, 1985.

<sup>119</sup> Press Release, Major League Baseball Office of the Commissioner, Ueberroth Institutes Drug Testing for Baseball Personnel, and Urges It Be Included in Joint Drug Agreement with Players (May 7, 1985); Letter from Peter V. Ueberroth to Donald M. Fehr and Leland S. MacPhail, dated May 7, 1985.

consider such a program and rejected his proposed compromise for a program under which only the Players Association would see the results of drug tests.

After his initial discussions with the Players Association failed, Ueberroth appealed directly to major league players, urging them to volunteer for confidential testing under the program with no threat of punishment.<sup>120</sup> Days later, the Commissioner announced an “overwhelming” consensus among players in favor of drug testing; his statement quoted New York Mets manager Davey Johnson as having said that he “took a team vote which came out 100 percent in favor of testing.”<sup>121</sup> The Players Association disputed the claims of overwhelming support from players and objected to the Commissioner making an appeal directly to them.<sup>122</sup>

In a 2002 interview, Marvin Miller, former executive director of the Players Association recalled the events:

. . . one day in 1985 Ueberroth astonished Don Fehr and myself by going on television during a national telecast and announc[ing] that he was voiding the existing drug program because it didn’t have mandatory testing. Don Fehr told him, in essence, to go to hell.

Incredibly, in 1986 he tried again. Without even bothering to consult the union, he sent a letter to every major league player urging them to submit to voluntary drug tests. The test results, he said, would be ‘totally confidential’ – and free of penalties – which made us wonder what

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<sup>120</sup> Memorandum from Peter V. Ueberroth to All Major League Players, dated Sept. 23, 1985. The Commissioner’s Office publicly announced the issuance of the memorandum the next day. *See* Press Release, Major League Baseball Office of the Commissioner, Ueberroth Asks Players to Rid Baseball of Drugs (Sept. 24, 1985).

<sup>121</sup> Press Release, Major League Baseball Office of the Commissioner, Players Against Drug Us (Sept. 26, 1985). A letter from the Commissioner to Don Fehr that day made the same points and urged Fehr to work with the Player Relations Committee to develop the testing program. *See* Letter from Peter V. Ueberroth to Donald M. Fehr, dated Sept. 26, 1985.

<sup>122</sup> Letters from Donald M. Fehr to Peter V. Ueberroth, dated Sept. 26, 1985.

he hoped to gain. Don suggested to the players that they simply toss the commissioner's letter in the garbage.<sup>123</sup>

During the 1985-86 off-season, the owners tried a different approach to implementing drug testing. Clauses were included in the contracts of approximately 550 players that would have required players who signed the contracts to submit to drug testing upon their club's request. The Players Association filed a grievance, in which it asserted that the provisions violated the Basic Agreement and that drug testing was a mandatory subject of collective bargaining that could not be implemented unilaterally through individual player contracts.

The owners' representative countered that the collective bargaining agreement did not speak to drug testing and that the provision benefited players by "permitting [them] to publicly disassociate [themselves] from the specter of drugs." The arbitrators disagreed with that argument, and they struck down the contract provisions on the ground that they violated the Basic Agreement. The panel did not reach the question of whether drug testing was a mandatory subject of collective bargaining.<sup>124</sup>

In April 1986, Commissioner Ueberroth again reached out to players directly, urging them to support a drug testing program and proposing that testing be implemented only for the next two seasons.<sup>125</sup> The Players Association criticized Ueberroth again for contacting

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<sup>123</sup> See Allen Barra, *Marvin Miller: Don't Trust Baseball's Drug-Testing Proposal*, salon.com, June 20, 2002. Miller continued: "When they finally got together, Ueberroth asked Fehr if the union would agree to testing 'even if it was just for the sake of public relations.' Don told me his jaw dropped; when he told me, mine dropped." *Id.*

<sup>124</sup> See *Arbitration between Major League Baseball Player Relations Comm. and Major League Baseball Players Ass'n*, Panel Decision No. 69, at 5-6, 8, (July 30, 1986). At the time, that issue had not been resolved as a matter of federal labor law, but in other cases soon thereafter the National Labor Relations Board concluded that workplace drug testing was a mandatory subject of collective bargaining. See *Johnson-Bateman Co.*, 295 N.L.R.B. 180 (1989); *Star Tribune*, 295 N.L.R.B. 543 (1989); see Rabuano, *supra* note 82, at 453; Rippey, *supra* note 82, at 146 n.18.

<sup>125</sup> Memorandum from Peter V. Ueberroth to All Players, dated Apr. 4, 1986.

players directly and “exhorting” them to support the testing plan.<sup>126</sup> No agreement was reached with regard to mandatory drug testing of players in Major League Baseball then or for the next sixteen years.

While the drug policy always had required clubs to report evidence of a player’s drug use to the Commissioner’s Office, beginning in November 1986, baseball’s drug policy was amended to provide for a fine of up to \$250,000 upon any club that failed to make such a report.<sup>127</sup> This reporting requirement was included in every subsequent iteration of the drug policy,<sup>128</sup> and since 2002, the potential fine for a club’s failure to report evidence of drug use has been \$2,000,000, the maximum fine that the Commissioner may impose on a club under the Major League Constitution.<sup>129</sup>

When I interviewed them in the course of this investigation, Commissioner Selig and Bob DuPuy, the current president and chief operating officer of Major League Baseball, confirmed that there has been no instance in which a fine for such a failure to report has been levied against any club.

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<sup>126</sup> Letter from Donald M. Fehr to Peter V. Ueberroth, dated Apr. 7, 1986.

<sup>127</sup> Memorandum from Peter V. Ueberroth to All Major League Clubs Re: Baseball’s Drug Abuse Program, dated Nov. 26, 1986, at 3.

<sup>128</sup> See Memorandum from Edwin M. Durso to All Major League Clubs Re: Baseball’s Drug Abuse Program, dated Mar. 1, 1988, at 3; Memorandum from A. Bartlett Giamatti to All Major League Clubs Re: Baseball’s Drug Use Policy and Drug Use Program, dated Apr. 19, 1989, at 3; Memorandum from Francis T. Vincent, Jr. to All Major League Clubs Re: Baseball’s Drug Use Policy and Drug Use Program, dated Apr. 17, 1990, at 3; Memorandum from Francis T. Vincent, Jr. to All Major League Clubs Re: Baseball’s Drug Policy and Prevention Program, dated June 7, 1991, at 2.

<sup>129</sup> See Memorandum from Allan H. “Bud” Selig to All Major League Clubs, etc. Re: Baseball’s Drug Policy and Prevention Program, dated Apr. 12, 2002, at 3.



6. 1991: Fay Vincent Adds Steroids to Baseball's Drug Policy

In September 1989, Francis T. ("Fay") Vincent was elected to succeed A. Bartlett Giamatti as Commissioner, after Giamatti's sudden death. Vincent was the first Commissioner to expressly include anabolic steroids among the substances prohibited under baseball's drug policy, which he did in the June 1991 version of the memorandum.<sup>130</sup> Steroids were added to the drug policy at that time, apparently as a result of the enactment of the Anabolic Steroids Control Act of 1990. Under that statute, anabolic steroids had been reclassified as Schedule III controlled substances, and the illegal use of them became subject to substantially increased criminal penalties.<sup>131</sup>

In July 1992, Vincent suspended New York Yankees pitcher Steve Howe from baseball for life based on his repeated use of cocaine in violation of baseball's drug policy. The Players Association successfully overturned this order in a grievance that was decided by the arbitrators after Vincent resigned as Commissioner later that year. The arbitrators concluded that the lifetime ban was without just cause and limited the suspension to the remainder of the 1992 season.<sup>132</sup> In dissent, management's representative on the panel, Vincent's deputy Stephen

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<sup>130</sup> See Memorandum from Francis T. Vincent, Jr. to All Major League Clubs Re: Baseball's Drug Policy and Prevention Program, dated June 7, 1991, at 2.

<sup>131</sup> Anabolic Steroids Control Act of 1990, Pub. L. No. 101-647, 104 Stat. 4789 (1990). Although the 1991 drug policy expressly mentioned anabolic steroids as prohibited substances for the first time, the Commissioner's Office viewed steroids to be covered by baseball's drug policy before then because of the policy's prohibition on the use of prescription drugs without a prescription. See Ken Rodriguez and Jorge Ortiz, *Canseco Denies Using Steroids*, Miami Herald, Sept. 30, 1988, at D1 (quoting spokesman Jim Small that "[a]nabolic steroids and other performance-enhancing drugs are prohibited by Major League Baseball.").

<sup>132</sup> See *Arbitration between Major League Baseball Players Ass'n and Comm'r of Major League Baseball*, Panel Decision No. 95 (Steven Howe) (Nov. 19, 1992).

Greenberg, called the majority's decision an example of why "baseball desperately need[ed] a collectively bargained drug agreement between the clubs and the players."<sup>133</sup>

#### 7. Baseball's Drug Policies Under Bud Selig

In May 1997, then-acting Commissioner Allan H. ("Bud") Selig reissued baseball's drug policy in a memorandum that was substantially unchanged from the 1991 policy memo that had been issued by Commissioner Vincent.<sup>134</sup> The policy was issued again by Commissioner Selig in memoranda in March 2001 and April 2002.<sup>135</sup> In addition, beginning in 2002, even after the drug policy was incorporated into the Basic Agreement, Commissioner Selig issued annual memoranda reiterating the drug policy as it applied to all non-playing personnel in Major League Baseball, including the possibility of unannounced drug tests for all such personnel.<sup>136</sup> During his tenure, Selig also unilaterally implemented drug testing in the minor

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<sup>133</sup> *Id.*, dissent, at 1; see Murray Chass, *A Biting Dissent on Howe Decision*, N.Y. Times, Nov. 20, 1992, at B12.

<sup>134</sup> See Memorandum from Bud Selig, chairman of the Executive Council of Major League Baseball, to All Major League Clubs, etc. Re: Baseball's Drug Policy and Prevention Program, dated May 15, 1997.

<sup>135</sup> See Memorandum from Allan H. "Bud" Selig to All Major League Clubs Re: Baseball's Drug Policy and Prevention Program, dated Apr. 12, 2002; Memorandum from Allan H. "Bud" Selig to All Major League Clubs Re: Baseball's Drug Policy and Prevention Program, dated Mar. 21, 2001.

<sup>136</sup> See Memorandum from Commissioner Allan H. "Bud" Selig to All Major League Clubs, etc. Re: Baseball's Drug Policy and Prevention Program, dated Apr. 15, 2003; Memorandum from Allan H. "Bud" Selig, Chairman of the Executive Council of Major League Baseball, to All Major League Clubs, etc. Re: Baseball's Drug Policy and Prevention Program, dated Mar. 15, 2005; Memorandum from Allan H. "Bud" Selig, Chairman of the Executive Council of Major League Baseball, to All Major League Clubs, etc. Re: Baseball's Drug Policy and Prevention Program, dated Mar. 2, 2005; Memorandum from Allan H. "Bud" Selig, Chairman of the Executive Council of Major League Baseball, to All Major League Clubs, etc. Re: Baseball's Drug Policy and Prevention Program Apr. 13, 2006.

leagues in 2001 and obtained the agreement of both the Players Association, in 2002, and the umpires association, in 2004, to drug treatment and testing programs.<sup>137</sup>

In early 1994, Selig and the owners proposed that a joint drug program be included in baseball's collective bargaining agreement. That 1994 proposal would have included steroids among baseball's prohibited substances and, as with the 1984 joint program, provided for testing of players for whom there was "reasonable cause" to believe drug use was occurring. The proposal did not provide for mandatory random drug testing, but it did include a provision for drug screening tests as part of every player's physical examination during spring training. Under the proposal, as had been the case under the 1984 joint program, first offenders would not be subject to discipline provided that they agreed to enter a counseling and treatment program. Unlike the 1984 program, however, a second offense would carry a sixty-day suspension without pay, with third and fourth offenses carrying penalties of a one-year suspension and a lifetime ban, respectively.<sup>138</sup>

The Players Association rejected the proposal, and it was not pursued any further by the owners. Later that year, after the owners and the Players Association were unable to come to agreement on other significant economic issues, a work stoppage resulted in the early end to the 1994 season and the cancellation of the post-season and World Series. A shortened 1995 season was played without a collective bargaining agreement in place. When bargaining resumed, resolution of the economic issues that had led to the stoppage of play took priority, and the owners did not revive the proposal to implement a new joint drug policy.

Officials of the Players Association said that the clubs did not appear to regard the 1994 proposal as a high priority and did not pursue its adoption vigorously. Indeed, Don Fehr

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<sup>137</sup> See Major League Baseball's Umpire Drug and Alcohol Testing Program.

<sup>138</sup> See Prevention of Drug Use and Distribution ("1994 Proposal on Drugs").

recalled that the proposal never even reached the main bargaining table during negotiations. At one general session, Fehr inquired about a media report regarding such a proposal.

Subsequently, the proposal was presented and discussed only at two subcommittee sessions that occurred in late July and early August 1994. The subject was not raised again after the August 1994 strike began.

Rob Manfred, baseball's current chief labor negotiator, recalled that anabolic steroids were included in the 1994 proposal to be proactive, and the decision to include steroids in the proposal was not based on any particular concern about the use of those substances in baseball at that time. He acknowledged that at the time the drug program was not as high a priority as economic issues.

#### 8. 2001 Minor League Drug Prevention and Treatment Program

The next round of collective bargaining would not occur until 2002. As awareness of the problem grew after the reported discovery of androstenedione in Mark McGwire's locker, in August 1998, the Commissioner's Office took a number of steps to lay the foundation for bargaining toward a joint drug program during 2002 negotiations. Those steps included an effort to improve regulation of dietary supplements and the introduction of a steroid education program.

Then, in June 2001, Commissioner Selig unilaterally implemented a drug testing program in baseball's affiliated minor leagues.<sup>139</sup> Under the program, minor league players were prohibited from using, selling, or distributing drugs of abuse or anabolic steroids. The program prohibited all Schedule III steroids and certain other substances (including clenbuterol, a non-anabolic veterinary medication that some athletes abuse in an effort to become leaner), but it did

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<sup>139</sup> See Major League Baseball's Minor League Drug Prevention and Treatment Program (2001).

not include some supplements with anabolic effects that were then legal for over-the-counter sale, including androstenedione and DHEA.

The program applied to all minor league players who were not members of the Players Association bargaining unit (that is, players who were not on the 40-man roster of any major league club). The Commissioner could impose drug testing unilaterally as to minor league players because they were not members of the Players Association and thus not parties to a collective bargaining agreement. The program implemented a system of random urine testing for prohibited substances, subjecting each player to up to three random tests per year in addition to any “reasonable cause” testing that might be justified in the case of any player.

The minor league program has continued to the present, with refinements in the list of prohibited substances, the number of random tests, testing procedures, and the penalties applicable for failed tests. Although the initial revision of the program was to lower the penalties that could result from failed drug tests, since August 2005 the penalties for failing a test for use of a prohibited performance enhancing substance under that program have been the same as those in place in Major League Baseball, which are discussed in more detail below: a suspension of 50 games for the first failed test; a suspension of 100 games for the second failed test; and permanent suspension from baseball for a third failed test.<sup>140</sup> Human growth hormone and androstenedione both were added to the minor league prohibited substance list for 2002, years

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<sup>140</sup> See Memorandum from Jennifer R. Gefsky to All Minor League Clubs Re: 2006 Minor League Drug Program, dated Aug. 25, 2005; Memorandum from Commissioner Selig to All General Managers, Farm Directors, Club Physicians and Employee Assistance Professionals, Re: Minor League Drug and Steroid Testing, dated Jan. 2, 2002.

earlier than either of these substances was added to the prohibited list under the collective bargaining agreement for Major League Baseball.<sup>141</sup>

Two rounds of in-season testing were conducted on minor league players during 2001, resulting in positive tests for steroids in 439 of 4,850 tests (9.1%). Players who tested positive were not subject to discipline initially but instead were provided treatment and counseling. In 2002, there were 4,719 tests of minor league players, resulting in 227 positive tests for steroids (4.8% of total tests); 20 players were suspended (without public notice) even though in 2002, first-time positive tests resulted in treatment rather than discipline. In 2003, a total of 4,772 tests resulted in 173 positives for steroids (4% of total tests); 20 players were suspended (without public notice).<sup>142</sup> In 2004, 4,801 total tests were conducted, resulting in 78 positive tests for “performance enhancing substances” (1.7% of total tests), and 78 suspensions, including 13 suspensions for second-time offenders. For the first time, players were subject to suspensions for first-time positive tests.<sup>143</sup> In 2005, a total of 5,961 in-season tests resulted in 106 positive tests for performance enhancing substances (1.78% of total tests) and 106 player suspensions.<sup>144</sup> In 2006, 6,433 total tests resulted in 23 positives (0.36% of total tests) and 23 suspensions.<sup>145</sup>

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<sup>141</sup> See Memorandum from Commissioner Selig to All General Managers, Farm Directors, Club Physicians and Employee Assistance Professionals Re: Minor League Drug and Steroid Testing, dated Jan. 2, 2002.

<sup>142</sup> See Letter from Robert D. Manfred, Jr. to Sen. George J. Mitchell, dated Mar. 28, 2007, at 11-12; Letter from Robert D. Manfred, Jr. to Rep. F. James Sensenbrenner, Jr. and Rep. John Conyers, Jr., dated June 20, 2005, Attachment 1.

<sup>143</sup> See Letter from Robert D. Manfred, Jr. to Sen. George J. Mitchell, dated Mar. 28, 2007, at 11-12; Letter from Robert D. Manfred, Jr. to Rep. F. James Sensenbrenner, Jr. and Rep. John Conyers, Jr., dated June 20, 2005, at 7.

<sup>144</sup> See Letter from Robert D. Manfred, Jr. to Sen. George J. Mitchell, dated Mar. 28, 2007, at 11-12. The Commissioner’s Office also produced data for testing in the Dominican Summer League in 2004 (97 positives out of 894 tests, an 11% positive rate) and 2005

C. Informal Reasonable Cause Testing

From the mid-1980s until the 2002 Basic Agreement, an informal and unwritten agreement existed between the Commissioner's Office and the Players Association that provided for a player to be subjected to testing for use of drugs such as cocaine or marijuana when there was a "reasonable suspicion" of the player's use of such drugs. Beginning with an incident in the summer of 2000, this informal understanding was expanded to provide for the possibility of "reasonable cause" testing based on evidence of a player's involvement with anabolic steroids.

No document memorializes the terms of the "reasonable cause" testing program, although the Commissioner's Office made an unsuccessful effort to document it with the Players Association in 1999. Don Fehr, the executive director of the Players Association, said that the program essentially followed the terms of the "reason to believe" testing that had been agreed to in the 1984 joint drug program in that it contemplated a determination of reasonable cause related to the specific individual tested.

"Reasonable cause" testing for steroids was conducted on over 25 major league players between 2000 and 2006, but we were informed that no documents exist with respect to such testing. No player ever tested positive for steroids or for any other performance enhancing substance as a result of those tests.

The informal understanding was reached long before Rob Manfred joined the Commissioner's Office. He viewed it as a "hat in hand program, it was whatever we could get out of Gene Orza" (associate general counsel and chief operating officer of the Players

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(90 positives out of 1,206 tests, a 7% positive rate), and 2005 testing in the Venezuelan Summer League (23 positives out of 272 tests, an 8.4% positive rate). Memorandum from Jennifer R. Gefsky to Robert D. Manfred, Jr., et al., dated Oct. 15, 2004 at 3; Memorandum from Jennifer R. Gefsky to Robert D. Manfred, Jr., dated Sept. 30, 2005, at 2-3.

<sup>145</sup> See Letter from Robert D. Manfred, Jr. to Sen. George J. Mitchell, dated Mar. 28, 2007, at 11-12 .

Association). Commissioner Selig also criticized the program because it provided for testing only if the Players Association agreed to it in a specific case.

Under the program, when evidence of a player's possible use of steroids came to the attention of the Commissioner's Office, Manfred contacted Orza and requested that testing of that player be conducted. Those negotiations invariably lasted at least several weeks. In those instances in which the Players Association agreed to such testing it occurred only subject to the understanding that: (1) the fact of the testing was to be kept strictly confidential; (2) there would be no discipline for a first positive test; and (3) the Commissioner's Office would agree to forego any investigatory interview of the player (medical evaluations by a physician were allowed).

Soon after the first incident in which this approach to "reasonable cause" testing was used, Manfred realized that the process was unworkable because it provided a player under suspicion with so much notice of the possibility that he would be tested that he could eliminate any prohibited substance from his system. It is therefore not surprising that none of the more than 25 players who were subjected to "reasonable cause" testing for steroids tested positive. Manfred concluded that seeking the agreement of the Players Association to revise the process before the 2002 negotiations was not worthwhile because it would distract from Commissioner Selig's top priority in this area – a collectively bargained, mandatory random drug testing program. Manfred also believed that the principal trade-off for the "reasonable cause" testing program – foregoing player interviews in cases where there were grounds for suspicion – was not detrimental. In Manfred's view, "[i]nterviewing players is not a productive exercise."

Because of the strict confidentiality of the program, only a few officials of either the Players Association or the Commissioner's Office even knew of its existence. Commissioner Selig was not informed of the results of any test conducted under the informal program.



Likewise, his director of security, Kevin Hallinan, was unaware of the testing in many instances until he learned of it through this investigation.

In congressional testimony in June 2002, Don Fehr acknowledged the existence of the program, referring a Senate subcommittee to a 2001 brochure prepared jointly by Major League Baseball and the Players Association that alluded to the program.<sup>146</sup> At the same hearing, however, Manfred denied that anything approaching a formal program was in place, testifying that:

Contrary to the impression created by Mr. Fehr's written statement, we do not have an agreed upon steroid policy in Major League Baseball. The Commissioner has unilaterally promulgated a policy on steroids that the union has consistently said is not binding on the players. While we have worked together in certain situations the current regulation is ad hoc at best, and dysfunctional at worst. To address this problem, we made a comprehensive proposal on steroids to the Players Association last March.<sup>147</sup>

In March 2005 congressional hearings, Manfred testified that in the summer of 2000 Boston Red Sox infielder Manny Alexander was subjected to "reasonable cause" testing after Massachusetts state police discovered anabolic steroids and syringes in the glove compartment of his car, which he had loaned to a clubhouse attendant.<sup>148</sup> As discussed in the

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<sup>146</sup> *Steroid Use in Professional Baseball and Anti-Doping Issues in Amateur Sports: Hearing Before the Subcomm. on Consumer Affairs, Foreign Commerce and Tourism of the S. Comm. on Commerce, Science and Transp.*, 107<sup>th</sup> Cong. 10 (2002); see Major League Baseball Players Association in Conjunction with Major League Baseball, *Steroids and Nutritional Supplements*, June 2001, at 2.

<sup>147</sup> *Steroid Use in Professional Baseball and Anti-Doping Issues in Amateur Sports: Hearing Before the Subcomm. on Consumer Affairs, Foreign Commerce and Tourism of the S. Comm. on Commerce, Science and Transp.*, 107<sup>th</sup> Cong. 7 (2002).

<sup>148</sup> See *Restoring Faith in America's Pastime: Evaluating Major League Baseball's Efforts to Eradicate Steroid Use: Hearing Before the H. Comm. on Gov't Reform*, 109<sup>th</sup> Cong. 335 (2005). Manfred told us that his disclosure of the testing of Alexander was "not appropriate" and that the Players Association criticized him for disclosing it in response to congressional questioning.

following sections of this report, we learned of a number of other instances in which players were tested, all with negative test results.

In every instance in which the Players Association agreed to “reasonable cause” testing for steroids during the years when that understanding was in place, no other investigation was conducted into a player’s possible involvement with steroids or other prohibited performance enhancing substances. No player was disciplined for possession or use of steroids under the Major League Baseball drug policy set forth in the Commissioner’s memoranda, even though several different incidents provided evidence of possible involvement with steroids by a number of major league players. These incidents are discussed in more detail in later chapters.

In 2002, the previously unwritten understanding between Major League Baseball and the Players Association was replaced by the joint drug program that was established under the 2002 Basic Agreement. The current program provides its own formal procedures for “reasonable cause” testing.<sup>149</sup>

D. The Joint Drug Program Under the Basic Agreement, 2002 to Present

By 2002, public scrutiny of baseball and the possibility that players were using steroids and other performance enhancing substances had grown in intensity since the previous negotiations with the Players Association had concluded.<sup>150</sup> For the first time, negotiations for a new collective bargaining agreement presented a real opportunity to achieve agreement on mandatory random drug testing. Selig described the negotiations as a whole as “very tense and tough.” Ultimately, a joint drug program that included the possibility of a mandatory random

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<sup>149</sup> See Major League Baseball’s Joint Drug Prevention and Treatment Program, § 3(C) (2006).

<sup>150</sup> See *infra* 60-85 (discussing press reports).

testing component was agreed to just before an August 2002 strike deadline, and that program has further evolved in the succeeding years.

In March 2002, the Commissioner's Office proposed a drug program modeled on the one implemented the previous year in the minor leagues.<sup>151</sup> Under the proposal, the use of anabolic steroids and other substances, including androstenedione, would be prohibited; players would be subject to up to three random drug tests each year; an initial failed test would be met with treatment rather than a suspension; and repeat offenders would be subject to discipline.<sup>152</sup> The Players Association, which historically had opposed mandatory random drug testing, did not immediately respond.

In a June 2002 cover story, Sports Illustrated reported that Ken Caminiti had admitted using anabolic steroids in 1996, the year he won the National League Most Valuable Player award, and for a number of seasons thereafter.<sup>153</sup> In the article, Caminiti also said that steroid use was widespread in Major League Baseball, an assertion that was supported by others quoted in the story.<sup>154</sup> The Sports Illustrated article, together with allegations by former American League outfielder (and former American League MVP) Jose Canseco about widespread steroid use in baseball, spurred a June 2002 hearing of a U.S. Senate subcommittee.

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<sup>151</sup> See Draft Proposal of Major League Baseball's Joint Drug Prevention and Treatment Program, dated Mar. 6, 2002. The Players Association has noted that the proposal was not raised until negotiations had been ongoing for a year.

<sup>152</sup> See Draft Proposal of Major League Baseball's Joint Drug Prevention and Treatment Program, dated Mar. 6, 2002; *Steroid Use in Professional Baseball and Anti-Doping Issues in Amateur Sports: Hearing Before the Subcomm. on Consumer Affairs, Foreign Commerce and Tourism of the S. Comm. on Commerce, Science and Transp.*, 107<sup>th</sup> Cong. 7 (2002) (testimony of Robert D. Manfred, Jr., executive vice president, labor and human resources, Major League Baseball).

<sup>153</sup> See Tom Verducci, *Totally Juiced*, Sports Illustrated, June 3, 2002, at 34.

<sup>154</sup> *Id.*

At the Senate hearing, Manfred described a meeting of several team physicians in January 2001 in which the physicians expressed their concern to Commissioner Selig that steroids were presenting a threat to players and to the integrity of the game. Manfred noted that there had been a 16% increase in the number of players going on the disabled list over a three-year period, and the length of their stays on the disabled list had grown longer. According to Manfred, the consensus among the team physicians at the meeting was that use of steroids had been a contributing factor.<sup>155</sup>

The physicians meeting that Manfred described was held in Milwaukee, and was attended by, among others, Dr. William Bryan of the Houston Astros, Dr. John Cantwell of the Atlanta Braves, Dr. John E. Conway of the Texas Rangers, and Dr. Michael Mellman of the Los Angeles Dodgers. The meeting was convened by the Commissioner in anticipation of the coming negotiations with the Players Association about a drug program and also to discuss implementation of the minor league drug testing program that year. Dr. Mellman recalled that all of the physicians who attended the meeting had suspicions about steroid use on their respective teams and said “we all had stories” about steroid use by players and its impact on their health. He remembered that the consensus among the team physicians was that steroid use was “prevalent” in Major League Baseball at the time.

Dr. Mellman believed that the subject of steroid use in baseball had been under discussion before the meeting but felt that Commissioner Selig expressed a genuine sense of concern about the issue at the meeting. Selig recalled that he came away from the meeting being “deeply troubled about steroids.”

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<sup>155</sup> See *Steroid Use in Professional Baseball and Anti-Doping Issues in Amateur Sports: Hearing Before the Subcomm. on Consumer Affairs, Foreign Commerce and Tourism of the S. Comm. on Commerce, Science and Transp.*, 107<sup>th</sup> Cong. 5-6 (2002) (testimony of Robert D. Manfred, Jr., executive vice president, labor and human resources, Major League Baseball).

At the June 2002 hearing, several Senators pressed Don Fehr of the Players Association to commit that drug testing for steroids would be included in baseball's new collective bargaining agreement.<sup>156</sup> He responded that the Association would consider in good faith the issues raised by the Commissioner's March 2002 drug program proposal, but he added that testing raised a number of difficult issues, including the invasion of players' privacy rights. In an article published two days later, Marvin Miller, the former executive director of the Players Association, asserted that the Commissioner's proposal was unworkable and amounted to "moral grandstanding" intended to make it appear that the Players Association was the obstacle to drug testing in baseball rather than to effect real reform.<sup>157</sup>

Discussions continued, however, and on August 30, 2002, the clubs and the Players Association reached agreement on the terms of a new Basic Agreement for the period 2003-06. In addition to a number of new economic provisions, for the first time the collective bargaining agreement included a form of mandatory random drug testing as part of a new joint drug prevention and treatment program.<sup>158</sup>

Commissioner Selig has stated that the drug testing program was the last item on which the parties reached agreement and that, while the compromise reached was not perfect, "at least it was a start."<sup>159</sup> In his interview for this investigation, Selig expressed the view that the 2002 program was a necessary step toward achieving the joint drug program that is in effect in

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<sup>156</sup> See *Steroid Use in Professional Baseball and Anti-Doping Issues in Amateur Sports: Hearing Before the Subcomm. on Consumer Affairs, Foreign Commerce and Tourism of the S. Comm. on Commerce, Science and Transp.*, 107<sup>th</sup> Cong. 20-31 (2002).

<sup>157</sup> See Allen Barra, *Marvin Miller: Don't Trust Baseball's Drug-Testing Proposal*, salon.com, June 20, 2002.

<sup>158</sup> See Major League Baseball's Joint Drug Prevention and Treatment Program (2002) at Attachment 18 to Basic Agreement.

<sup>159</sup> See Barry M. Bloom, *Selig: Drug Use Drops Below 1 Percent*, mlb.com, Feb. 1, 2006.

Major League Baseball today. Don Fehr of the Players Association said that the 2002 negotiations were the first time the owners seriously pursued a proposal that called for random testing of players.

The 2002 joint drug program prohibited the use, possession, distribution, or sale of a number of drugs, including all steroids listed on Schedule III of the Controlled Substances Act or any substances that later were added to that schedule or to Schedule II of the Act. (This provision resulted in the automatic addition of androstenedione and other steroid precursors, other than DHEA, to baseball's prohibited list when Congress enacted the Anabolic Steroids Control Act of 2004. It also meant that human growth hormone was not automatically included because it is not a "controlled substance" under current federal law.) The program also provided for the possible automatic addition of a number of other substances, which were listed in an addendum, based on congressional action to regulate them generally.<sup>160</sup>

Drug testing beyond 2003 was not automatic under the program. Random testing only would be implemented beginning in 2004 if 5% or more of the players tested during anonymous "survey testing" in 2003 tested positive for steroids, with a refusal to submit to a test counting as a positive result.<sup>161</sup> If the 5% threshold was met, however, mandatory random testing would begin with the 2004 season, carrying with it the possibility of discipline if a player failed a second steroids test (after being placed on a treatment track following a first positive test).<sup>162</sup>

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<sup>160</sup> Major League Baseball's Joint Drug Prevention and Treatment Program, §§ 1(D)(2), 2 & Addendum C (2002).

<sup>161</sup> *Id.*, §§ 3(A), (F).

<sup>162</sup> *Id.*, §§ 3(A), 9(B).

In November 2003, Major League Baseball announced that between 5% and 7% of players who participated in the survey testing in 2003 had tested positive for steroids; mandatory random testing therefore was triggered to begin in the 2004 season.<sup>163</sup> In 2004, 1,133 tests were conducted under the program, resulting in 12 undisputed positive results for steroids.<sup>164</sup> No players were suspended as a result of these positive tests because the program did not provide for discipline for a first-time offender at that time.

During late 2003 and into 2004, the issue of steroids in baseball again attracted attention after the offices of BALCO were raided by federal agents and news stories appeared reporting that several baseball players had appeared before a federal grand jury that was investigating BALCO.<sup>165</sup> In his January 2004 state of the union address, President George W. Bush denounced the use of steroids in elite sports and called on athletes, owners, and unions to

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<sup>163</sup> 1,369 tests were conducted in 2003, and 96 of those tests were positive for steroids. Although 13 of the 96 positives were disputed by the Players Association, the disputes were never resolved because the positive rate was above the 5% threshold under either calculation. *See* Letter from Robert D. Manfred, Jr. to Rep. Thomas Davis and Rep. Henry A. Waxman, dated Mar. 14, 2005, at 3; Letter from Robert D. Manfred, Jr. to Rep. F. James Sensenbrenner, Jr. and Rep. John Conyers, Jr., dated June 20, 2005, at Attachment 1.

In early 2004, federal law enforcement agents seized data concerning players who the agents concluded had tested positive in 2003 survey testing. A later appellate court decision stated that the names of “over one-hundred” players other than players who were implicated in the BALCO investigation were identified by law enforcement agents. *See United States v. Comprehensive Drug Testing, Inc.*, 473 F.3d 915, 924 (9th Cir. 2006). The government’s reported list and the data that it was based on remain under seal. As a result, we did not have access to the list or the data.

<sup>164</sup> *See* Letter from Robert D. Manfred, Jr. to Rep. Thomas Davis and Rep. Henry A. Waxman, dated Mar. 14, 2005, at 2; *see also* Letter from Robert D. Manfred, Jr. to Rep. F. James Sensenbrenner, Jr. and Rep. John Conyers, Jr., dated June 20, 2005, at Attachment 1. For an additional 27 tests, the results either were disputed or raised the possibility that the players were ingesting steroid precursors that were not banned at the time. *See id.*

<sup>165</sup> *See infra* 112-20.

address the issue.<sup>166</sup> Three weeks later, U.S. Attorney General John Ashcroft announced an indictment against several individuals involved with BALCO.<sup>167</sup> In February 2004, Commissioner Selig issued a directive to all major league owners, front office executives, and managers to refrain from commenting on “the BALCO proceedings specifically and performance-enhancing drugs generally,” and asked that the same request be conveyed to active major league players.<sup>168</sup>

In March 2004, the Senate subcommittee held another hearing on the subject of steroids in baseball. Senator John McCain addressed Don Fehr of the Players Association about perceived weaknesses in baseball’s steroids policy, telling him:

Your failure to commit to addressing this issue straight on and immediately will motivate this committee to search for legislative remedies. . . . I can tell you and your players that you represent the status quo is not acceptable. And we will have to act in some way unless the players at Major League Players Association act in affirmative and rapid fashion. . . . [T]he integrity of the sport, and the American people, demand a certain level of adherence [to] standards that, frankly, is not being met at this time.<sup>169</sup>

Fehr responded: “We’re certainly willing to sit down and discuss any new and different ideas and to look at matters in light of new information.” At the same hearing, Commissioner Selig

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<sup>166</sup> State of the Union Address, President George W. Bush, The White House Office of Communications (Jan. 20, 2004).

<sup>167</sup> Press Release, Department of Justice, Four Individuals Charged in Bay Area with Money Laundering and Distribution of Illegal Steroids (Feb. 12, 2004).

<sup>168</sup> See Memorandum from Commissioner Allan H. Selig to All Major League Owners, Club Presidents, Chief Executive Officers, General Managers and Field Managers Re: Performance-Enhancing Substances and BALCO, dated Feb. 26, 2004.

<sup>169</sup> *Effectiveness of Drug Testing in Preventing Steroid Use, Hearing Before the S. Comm. on Commerce, Science and Transp.*, 108th Cong. 73 (2004).



said: “I realize that we have work to do. We need more frequent and year-round testing of players. We need immediate penalties for those caught using illegal substances.”<sup>170</sup>

Less than a year later, Major League Baseball and the Players Association agreed to revisions to the joint drug program, which they described in a January 2005 joint press release.<sup>171</sup> For the first time, human growth hormone was added as a prohibited substance under the program (together with seventeen other compounds).<sup>172</sup> In addition, the parties agreed to more stringent penalties for positive steroids tests, including: a 10-day suspension for the first positive test; a 30-day suspension for the second positive test; a 60-day suspension for the third positive test; a one-year suspension for a fourth positive test; and additional, progressive discipline for any further positive tests.<sup>173</sup>

Even as the 2005 revisions to the joint drug program were being finalized, however, the February 2005 release of Jose Canseco’s memoir, *Juiced*, led to a March 17, 2005 hearing on the issue before the U.S. House of Representatives Committee on Government Reform.<sup>174</sup> One month later, Commissioner Selig sought the Players Association’s agreement to

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<sup>170</sup> *Id.* at 67, 74.

<sup>171</sup> Press Release, Major League Baseball, MLB and Players Association Reach Tentative Agreement on New Steroid Policy (Jan. 13, 2005).

<sup>172</sup> See Major League Baseball’s Joint Drug Prevention and Treatment Program, § 2(B) (2005).

<sup>173</sup> See *id.* at § 9(B). The initial draft of the program suggested the possibility that a first-time offender could be fined and not suspended, but in testimony and a follow-up letter, Rob Manfred stated that this reading was not consistent with the parties’ agreement and that a 10-day suspension would be automatic for any first-time positive test for steroids. See Letter from Robert D. Manfred, Jr. to Rep. Joseph Barton, Rep. Cliff Stearns and Rep. Nathan Deal, dated Mar. 24, 2005.

<sup>174</sup> See *Restoring Faith in America’s Pastime: Evaluating Major League Baseball’s Efforts to Eradicate Steroid Use: Hearing Before the H. Comm. on Gov’t Reform*, 109<sup>th</sup> Cong. 2, 10-11 (2005); see also Letter from Robert D. Manfred, Jr. to Rep. Joseph Barton, Rep. Cliff Stearns and Rep. Nathan Deal, dated Mar. 24, 2005.

increased penalties of a 50-game suspension for first-time offenders, a 100-game suspension for second-time offenders, and a permanent ban for third-time offenders. The Commissioner also recommended other changes, including adding amphetamines as banned substances.<sup>175</sup> On November 15, 2005, the Commissioner and the Players Association jointly announced revisions to the program that implemented many of Selig's proposals.<sup>176</sup> The program in effect today remains essentially unchanged from that revised program.<sup>177</sup>

The 2005 amendments added a new provision permitting either party to suspend drug testing in the event of a "governmental investigation" that sought drug testing data as to particular players (as opposed to data regarding testing as a whole).<sup>178</sup> To date, neither party has exercised its prerogative to suspend testing under this provision.

Before the provision was added to the program, however, testing was suspended for some players for a period during 2004. In April 2004, federal agents executed search warrants on two private firms involved in the 2003 survey testing, Comprehensive Drug Testing, Inc. and Quest Diagnostics, Inc.; the warrants sought drug testing records and samples for ten major league players connected with the BALCO investigation. In the course of those searches,

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<sup>175</sup> See Letter from Commissioner Allan H. (Bud) Selig to Donald M. Fehr, dated Apr. 25, 2005.

<sup>176</sup> See Press Release, Major League Baseball Office of the Commissioner and Major League Players Association, MLB, MLBPA Announce New Drug Agreement, dated Nov. 15, 2005; Major League Baseball's Joint Drug Prevention and Treatment Program (2006). Amphetamines and other stimulants were added to the joint drug program, but positive tests for these substances were subject to a different scheme of penalties, with no penalty for the first failed test, a 25-game suspension for the second failed test, an 80-game suspension for the third failed test, and permanent suspension for a fourth failed test. See Major League Baseball's Joint Drug Prevention and Treatment Program §§ 2(C), 3(A), 8(C) (2006).

<sup>177</sup> See 2007 Basic Agreement Between the 30 Major League Clubs and the Major League Baseball Players Association, Art. XXVII.

<sup>178</sup> See Major League Baseball's Joint Drug Prevention and Treatment Program, § 6(E) (2006); Major League Baseball's Joint Drug Prevention and Treatment Program, § 6(E) (2005).

the agents seized data from which they believed they could determine the identities of the major league players who had tested positive during the anonymous survey testing.<sup>179</sup> As discussed in more detail below, a moratorium on testing was agreed to between the Commissioner's Office and the Players Association to provide the Players Association the opportunity to notify the affected players that the information was in the hands of the government.<sup>180</sup>

The Players Association filed motions in federal court seeking the return of all of the property seized and quashing certain other grand jury subpoenas issued after the initial search warrants were executed. The district court granted those motions, but the U.S. Court of Appeals for the Ninth Circuit reversed those orders, finding that the government's seizure of the information was appropriate and lawful. The appellate court remanded the case for further proceedings in the district court as to certain of the seized information.<sup>181</sup> As of the date of this report, a motion by the Players Association for reconsideration of the decision is still pending.

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<sup>179</sup> See *United States v. Comprehensive Drug Testing, Inc.*, 473 F.3d 915, 920-24 (9th Cir. 2006).

<sup>180</sup> See *infra* at 281-84.

<sup>181</sup> See *Comprehensive Drug Testing, Inc.*, 473 F.3d at 943.

#### IV. Early Indications of Steroid Use in Baseball (1988 to August 1998)

As noted earlier in this report, in 1994 Congress passed and the President signed into law the Dietary Supplement Health and Education Act. It was approved unanimously by the Senate, without objection. I was the Majority Leader of the Senate when DSHEA was approved. It was one of thousands of measures that the Senate considered during my tenure. Today, thirteen years later, I have only a vague recollection of the Senate's consideration of the Act. However, with the benefit of hindsight, knowing what I now know, I regret that I did not speak out against the manner of regulating supplements that resulted from enactment of that law.

I have had other similar experiences. As a result, I am well aware of the difficulty, the complexity, and sometimes the unfairness of judging past actions with the benefit of knowledge of later events. Nonetheless, when properly and carefully done, analysis of the past can be a useful, sometimes indispensable, guide for avoiding mistakes in the future.

As the discussion in the following sections demonstrates, baseball's response to the use of performance enhancing substances was slow to develop and was initially ineffective, but it gained momentum after 2002. A review of the early warning signals can be valuable in evaluating the current program and, most importantly, in helping guide future actions.

Many baseball officials have pointed to the intense media scrutiny in August 1998 that followed the discovery of androstenedione in Mark McGwire's locker as the event that focused their attention on whether baseball had a problem with the use of performance enhancing substances. There were earlier incidents and many published reports, but they were scattered across several years and around the country. Collecting and reading them all at once, as I have done, makes it obvious in hindsight what was happening.

There have been many estimates of use. In 2002, former National League Most Valuable Player Ken Caminiti estimated that "at least half" of major league players were using

anabolic steroids. Dave McKay, a longtime coach for the St. Louis Cardinals and the Oakland Athletics, estimated that at one time 30% of players were using them. Within the past week, the former Cincinnati Reds pitcher Jack Armstrong estimated that between 20% and 30% of players in his era, 1988 to 1994, were using large doses of steroids while an even higher percentage of players were using lower, maintenance doses of steroids.<sup>182</sup> There have been other estimates, a few higher, many lower, all impossible to verify.

The players who used performance enhancing substances bear an obvious share of the responsibility for the problem; but others, both in and out of baseball, share in that responsibility. Even before 1998 many in baseball were aware of the problem; indeed, several baseball officials talked publicly about it then. Those who knew about it should have insisted that something be done. The issue did not receive the same degree of attention that later followed the McGwire incident.

A. Jose Canseco and the First Public Speculation About Steroids in Baseball

In a widely reported incident during the Summer Olympics in September of 1988, the Canadian sprinter Ben Johnson was stripped of a gold medal in the 100-meter sprint for testing positive for stanozolol, an anabolic steroid sold under the brand name Winstrol.<sup>183</sup> Days later, the first public speculation appeared about a player's use of steroids in Major League Baseball.

In an appearance on the CBS program *Nightwatch* on September 28, 1998, Washington Post baseball writer Thomas Boswell described Jose Canseco as "the most conspicuous example of a player who has made himself great with steroids." Boswell said he

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<sup>182</sup> See Wayne Coffey, *Former All-Star Jack Armstrong Hoping to Set the Record Straight on Steroid Era*, N.Y. Daily News, Dec. 9, 2007.

<sup>183</sup> Michael Janofsky, *Johnson Loses Gold to Lewis After Drug Test*, N.Y. Times, Sept. 27, 1988, at A1.

based this assertion on comments made by Tony La Russa, then the manager of the Oakland Athletics, to the effect that Canseco had made “some mistakes” earlier in his career. La Russa said in response that he had not intended to imply that Canseco had used steroids, and Canseco denied that he had done so.<sup>184</sup>

Soon after Boswell’s remarks, the Oakland Athletics began the American League Championship Series against the Boston Red Sox in Fenway Park. Canseco was met with loud chants deriding him for his alleged steroid use, prompting Canseco to flex his biceps and tip his cap to the Fenway fans for “their originality.”<sup>185</sup> A spokesman for the Commissioner’s Office said that baseball would not investigate Canseco’s possible steroid use because baseball had “no information about his usage or the usage of any other player in the major leagues.”<sup>186</sup>

Sandy Alderson, Oakland’s general manager at the time, remembered the chanting, but in our interview he said that he did not then believe that Canseco had used steroids. Later, as one of the most senior executives in Major League Baseball, Alderson came to believe that baseball had a problem with steroid use, but he did not come to that conclusion until sometime after the 1998 articles appeared about McGwire’s use of androstenedione.<sup>187</sup> In congressional testimony in 2005, Alderson said that during the 1990s, other factors “obscured a steroid problem”:

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<sup>184</sup> See *Report That He Used Steroids Denied by Athletics’ Canseco*, St. Louis Post-Dispatch, Oct. 1, 1988, at C3.

<sup>185</sup> Peter Gammons, *Socking it to the Red Sox: With an All-Around Performance Worthy of the A’s of the 1970s, Oakland Beat Boston for the Pennant in Four Straight*, Sports Illustrated, Oct. 17, 1988, at 34.

<sup>186</sup> Ken Rodriguez and Jorge Ortiz, *Canseco Denies Using Steroids*, Miami Herald, Sept. 30, 1998, at D1.

<sup>187</sup> See *Restoring Faith in America’s Pastime: Evaluating Major League Baseball’s Efforts to Eradicate Steroid Use: Hearing Before the H. Comm. on Gov’t Reform*, 109<sup>th</sup> Cong. 307 (2005) (statement of Sandy Alderson, then-executive vice president for baseball operations, Major League Baseball).

Home runs and run production were increasing during the time but not always year to year. At the same time, strength programs were in vogue across baseball. Hitter-friendly ballparks were being built. Expansion had occurred in 1993 and again in 1998. Two seasons, '94 and '95, had been shortened by a players' strike. Bat design had changed and there was an emphasis with many clubs on having more offensive players even at traditionally defensive positions.<sup>188</sup>

Just before the 1989 season began, David Valdez, Jose Canseco's assistant and traveling companion, pleaded guilty to possession of a handgun while clearing security in Detroit Metropolitan Wayne County Airport. He was alleged to have been in possession of steroids when the gun was seized. Canseco had been with Valdez at the time, but he later denied any connection to the steroids or even knowing that Valdez was carrying steroids, explaining to a reporter that: "From what I know when he was young he was anemic and they did prescribe some pills for weight gain."<sup>189</sup> Valdez said that he admitted the gun charges to spare Canseco embarrassment about the steroids. He explained that the steroids belonged to him, not Canseco, but Valdez added that he did not know the pills he was carrying were steroids at the time of his arrest.<sup>190</sup>

Given Canseco's more recent and highly publicized admissions of his own steroid use, the connection between Canseco and the steroids Valdez was carrying while traveling with him now appears obvious. At the time, however, a report in the San Francisco Chronicle described the connection as "tenuous" (although soon thereafter a Chronicle sports columnist expressed some skepticism and also stated that baseball did "not even have a rule against steroid

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<sup>188</sup> *Id.*

<sup>189</sup> David Bush, *Steroids Found on Canseco's Friend Incident at Detroit Airport*, S.F. Chron., Mar. 22, 1989, at D1.

<sup>190</sup> John Castine, *Friend Says He Pleaded Guilty to Protect A's Canseco*, New Orleans Times-Picayune, Mar. 22, 1989, at C10.

use” and “[t]heoretically, a baseball player could keep a bottle of steroids in his locker in the clubhouse and eat them during interviews”).<sup>191</sup>

Fay Vincent, who served as Commissioner from September 1989 to September 1992, said years later that he was “wrong not to jump all over the steroids issue”:

There were signs. There were rumors. We all heard about Canseco. But the baseball world – and I was one of them – thought steroids was a football problem, not a baseball problem. We were totally wrong.<sup>192</sup>

In hindsight, Vincent told me that he failed to notice the emergence of steroids because he was focused on cleaning up the problem of cocaine use by major league players.<sup>193</sup>

In 2005, after Canseco’s memoir *Juiced* was published, former Oakland manager Tony La Russa told “60 Minutes Wednesday” that when Canseco played for Oakland he “would laugh about the time that other guys were spending [in the gym] and how he didn’t have to, because he was, he was doing the other ‘helper.’ He was having help in a different way. You know, the easy way.”<sup>194</sup> The San Francisco Chronicle reported that La Russa said that when Canseco got his contract, “he changed. He’d talk about the juice, and others would talk to him about his health.”<sup>195</sup> La Russa also reportedly said that in 1990 or 1991, Canseco “stopped

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<sup>191</sup> David Bush, *Steroids Found on Canseco’s Friend Incident at Detroit Airport*, S.F. Chron., Mar. 22, 1989, at D1; C.W. Nevius, *Thank you, Ben Johnson*, S.F. Chron., Mar. 24, 1989, at D1.

<sup>192</sup> Jay Mariotti, *Pleading the Fifth Can’t Hide the Truth*, Chicago Sun-Times, Mar. 17, 2005, at 119.

<sup>193</sup> In addition to Steve Howe, whose lifetime ban was overturned after Vincent was removed as Commissioner, Vincent suspended pitcher Rick Leach, catcher Gilberto Reyes, outfielder Otis Nixon, first baseman Leon Durham, and pitcher Pascual Perez for violating the Commissioner’s drug policy. As mentioned above, Vincent amended baseball’s drug policy in June 1991 to add anabolic steroids as prohibited substances, soon after the Anabolic Steroids Control Act of 1990 became effective.

<sup>194</sup> Associated Press, *La Russa: Canseco Had Helper*, Wash. Post, Feb. 17, 2005, at D9.

<sup>195</sup> John Shea, *Steroid Accusations Leave Former Teammates, La Russa Livid*, S.F. Chron., Feb. 7, 2005, at D1.



working, he got bigger than ever, and the coaches and I got suspicious and actually confronted him.”<sup>196</sup> Similarly, Dave McKay, an Oakland coach from 1984 to 1995, told the New York Times that Canseco would speak openly about steroids and ignore advice to stop using them.<sup>197</sup> He was also quoted in the Toronto Sun as having said that: “We had one guy who talked about steroids and that was Jose. . . . The most common question I was asked was: ‘I won’t get too big, will I?’”<sup>198</sup>

But when La Russa and McKay were interviewed in connection with this investigation, they both denied having direct knowledge that Canseco had used steroids. La Russa claimed that he had “exaggerated” in his CBS interview, that Canseco had never used the word “helper,” and that, in fact, La Russa had never confronted Canseco about his use of steroids. When asked why he would “exaggerate” on national television, La Russa said that he questioned Canseco’s motives in making the statements he had made and he felt that Canseco was trying to impugn the achievements of his former Oakland teammate Mark McGwire and the Oakland teams of the late 1980s. McKay did not deny the accuracy of his reported statements, but he claimed that the statements did not amount to an acknowledgment that he had first-hand knowledge of Canseco’s use of steroids. McKay said that when he stated that “we had one guy who talked about steroids and that was Jose,” he meant only that if any player might have used steroids it was Canseco. McKay also heard other people mention that Canseco might have used steroids.

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<sup>196</sup> Bernie Miklasz, *Previous Defense of Canseco Hurts La Russa’s Case*, St. Louis Post-Dispatch, Feb. 14, 2005, at D1.

<sup>197</sup> Tyler Kepner, *La Russa Disputes Claims in Canseco’s Book*, N.Y. Times, Feb. 7, 2005, at D1.

<sup>198</sup> Bob Elliot, *McKay: Anger to Pity: Ex-A’s Coach Tells Bob Elliot that He Expects to Be Named in Canseco’s Controversial Book*, Toronto Sun, Feb. 10, 2005, at Sports 6.

Even while providing these explanations of their prior statements, both La Russa and McKay acknowledged that they had suspected Canseco of using steroids when he was playing with Oakland. McKay said: “It just got to the point where you knew he [used them].” Neither La Russa nor McKay shared their concerns with the Oakland front office, however. According to La Russa, “I thought, what’s the use? So I didn’t say anything.”

Former Oakland general manager Sandy Alderson strongly denied a statement in the book *Juicing the Game* that “[b]y 1992, even Alderson thought Canseco was a steroid user.” Alderson had been familiar with the incidents reported in the media, but he still did not believe at the time that Canseco was using steroids and did not look into it. Alderson did, at one point, consider testing one or two players for steroids, possibly including Canseco (but, Alderson made clear, not Mark McGwire). The club obtained testing equipment and arranged for a testing laboratory, but the idea was abandoned out of a concern that the testing would violate baseball’s collective bargaining agreement. Canseco was traded to the Texas Rangers in 1992 but, according to Alderson, not out of any concern relating to his alleged involvement with steroids.

B. Lenny Dykstra Evokes Suspicions of Steroid Use

As with Jose Canseco, Philadelphia Phillies center fielder Lenny Dykstra was the subject of several articles speculating about his possible use of steroids.<sup>199</sup> The first appeared at the start of the 1990 season, when Dykstra credited “real good vitamins” for adding 30 pounds of muscle to his frame during the off-season. Similar articles appeared early in 1991 and after a break-out season in 1993.<sup>200</sup> During our investigation, Philadelphia’s then-general manager Lee

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<sup>199</sup> Dykstra’s name would come up years later in connection with a government investigation of Kirk Radomski. *See infra* at 149-50.

<sup>200</sup> *See* Rick Hummel and Dan O’Neil, *Cox Hopes to Be Back in Month . . . Says 25 Starts Are Possible This Season*, St. Louis Post-Dispatch, Apr. 16, 1990, at 4C; Ray Ratto, *Opponents Sense Giants Out-of-Kilter Rosen, Craig Suddenly Have Been Forced to Patch Roster with*

Thomas confirmed that he had suspicions that Dykstra might have been using performance enhancing substances when he arrived at spring training in 1993 noticeably bigger. Thomas told Dykstra he hoped he had not done anything to jeopardize his health, and in response Dykstra denied using steroids.

Philadelphia's then-head athletic trainer Jeff Cooper told us that during this period he observed a Phillies player whose use of steroids was "obvious." Cooper would not divulge the player's identity to us. He told us that he approached the general manager (apparently Thomas) to report his concerns, and the general manager advised Cooper that he should raise the subject with the player directly. Cooper then did raise the issue with the player, who said it was none of Cooper's business. The matter went no further.

C. The 1991 Major League Baseball Alcohol and Drug Use Survey

In 1990, Major League Baseball commissioned a survey of alcohol and drug use among player and non-player personnel. The project was a joint effort of the Players Association and the owners' Player Relations Committee. Most of the responses were gathered during spring training in 1991.<sup>201</sup>

Approximately 80% of major league players participated in the survey. Of the 880 players who responded (including some minor league players), only 1.5% reported using anabolic steroids during their lifetime, and only 0.5% reported use of steroids in the preceding

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*Bodies from Waiver Wire, National League Notebook*, S.F. Chron., Apr. 7, 1990, at D3 ("Center fielder Len Dykstra, who was supposed to be trade bait last winter, came back 26 pounds heavier and proceeded to go 4-for-4 with a double Sunday in his first official game of the season. Reason: 'I did a lot of lifting and free weights. And I took some very good vitamins.' Uh-oh."); Stan Hochman, *Thomas: Blame Union, Not Phils*, Phila. Daily News, Mar. 16, 1991, at 45 ("Guys saying that if Lenny Dykstra hits .325 we're not worried about what happens off the field. We are very concerned. But our hands are tied. We're handcuffed by the union."); Ross Newhan, *In Your Face if Not Your Hair*, L.A. Times, Mar. 20, 1994, at Sports 3.

<sup>201</sup> George De Leon, Ph.D., and Stanley Sack, Ph.D., Major League Baseball Alcohol and Drug Use Survey, 1991, Final Report (Draft 3/93).

12 months. While the study's authors acknowledged that underreporting was certainly a possibility, participating players admitted use of amphetamines and certain serious drugs of abuse at much higher rates. The study's authors concluded that "there is little indication of lying and the obtained rates should be taken as reliable but *conservative* estimates."<sup>202</sup>

The survey, and the cooperation between owners and the Players Association that brought it about, reflected an admirable joint commitment to self-examination of drug use in the game at the time. The authors concluded that "[t]he major purpose of this project has been accomplished. MLB has established a scientific data base to inform alcohol and drug policy and planning."<sup>203</sup> The study's authors made several recommendations, most notably that "MLB should develop a comprehensive integrated health-oriented preventive education, treatment, and aftercare program for the entire MLB community" and that "MLB should launch periodic surveys to monitor changes and trends in substance use . . ."<sup>204</sup>

D. Baseball Writers Address the Issue, 1992-95

In March 1992, Pittsburgh columnist Gene Collier addressed the perception that baseball was not a sport for steroids users. Collier derided the suggestion that the game of baseball "is simply too complex to be positively augmented by some injectable." He quoted Penn State professor Charles Yesalis, an outspoken critic of steroid use, who said that steroids were a "natural" fit for baseball:

I don't know how common it is, but I have colleagues in the sports medicine community who say "Yeah, they're doing it. . . . You know baseball players are lifting weights. They're in gyms where the steroids are, and pro baseball players know pro football players."

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<sup>202</sup> *Id.* at 53 (emphasis in original).

<sup>203</sup> *Id.* at 70.

<sup>204</sup> George De Leon, Ph.D., and Stanley Sack, Ph.D., Major League Baseball Alcohol and Drug Use Survey, 1991, Presentation Report, at 23.

After discussing the problems posed by human growth hormone and other substances that were difficult to detect in drug tests, Collier concluded that baseball “should consider testing if only to show how it feels about a level field being mandatory.”<sup>205</sup>

In August 1992, Peter Gammons reported in the Boston Globe that while there was not much discussion of steroid use in baseball, “there’s a growing suspicion that it’s much greater than anyone lets on.” Ten years before Rob Manfred’s 2002 Senate testimony, Gammons wrote that a recent increase in injuries in Major League Baseball could be the result of steroid use, as “players’ muscle mass becomes too great for their bodies, resulting in the odd back and leg breakdowns . . .”<sup>206</sup>

The issue was mentioned from time to time in articles over the next several years. One Long Beach, California reporter asserted in June 1993 that the use of steroids in baseball was “starting to run rampant.” A law review article in spring 1994 argued for separate drug testing programs in baseball for drugs of abuse and performance enhancing substances.<sup>207</sup>

A vocal early observer of the growing steroids problem in baseball was Bob Nightengale, who was then a baseball writer with the Los Angeles Times (and now covers baseball for USA Today). In a July 1995 article entitled “Baseball Still Doesn’t Get It,” Nightengale observed:

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<sup>205</sup> Gene Collier, *Baseball’s Field May Not Be Level*, Pittsburgh Post-Gazette, Mar. 22, 1992, at C1.

<sup>206</sup> Peter Gammons, *They’ve Met Disappointment*, Boston Globe, Aug. 16, 1992, at 48.

<sup>207</sup> See David Cunningham, *More Than a Few Make Much Ado Over Voodoo*, Long Beach Press-Telegram, June 28, 1993, at E3; Edward Rippey, *Contractual Freedom Over Substance-Related Issues in Major League Baseball*, 1 Sports Lawyers J. 143, 156 (Spring 1994); see also Bob Nightengale, *Herzog, Others Say Lamont Was Right to Look for Cheating*, L.A. Times, July 20, 1994, at Sports 1 (“Said Angel second baseman Harold Reynolds: ‘You hear about some guys using steroids for some extra pop, but not cork.’”).

Come on, you know there's no steroid use in baseball. Those bodies and dramatic increases in strength and bat speed are only the byproducts of these athletes dedicating their bodies to the gym all winter. That's what baseball tells us.<sup>208</sup>

Several weeks later, a Nightengale story quoted a number of major league players and front office executives who expressed concern over the prevalence of steroid use in Major League Baseball.<sup>209</sup> Originally published in the Los Angeles Times, the story was picked up by wire services over the next few days and a revised version ran in the next issue of the Sporting News, in which steroid use was called "baseball's deep, dark, sinister secret."<sup>210</sup>

In the article, Randy Smith, then the general manager of the Padres, was quoted as having said that "[w]e all know there's steroid use, and it's definitely become more prevalent." He estimated that "10% to 20%" of players were using steroids. Another unnamed general manager said that he "wouldn't be surprised if it's closer to 30%" and that he thought the entire lineup of one American League team a few years earlier "may have been on it." He said he was "seeing guys now who were washed up five years ago, and now they've got bat speed that they've never had before. It's insane." Kevin Malone, then-general manager of the Montreal Expos, said that he heard "rumors that usage is way up, and it would be nice to know if those are accurate." Players also were quoted in the article, with Frank Thomas of the Chicago White Sox

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<sup>208</sup> Bob Nightengale, *Baseball Still Doesn't Get It*, Palm Beach Post, July 2, 1995, at C13.

<sup>209</sup> Bob Nightengale, *Steroids Become an Issue, Baseball: Many Fear Performance-Enhancing Drugs Is Becoming Prevalent and Believe Something Must Be Done*, L.A. Times, July 15, 1995, at C1.

<sup>210</sup> Bob Nightengale, *Steroids in baseball? Say it ain't so, Bud.*, Sporting News, July 24, 1995, at 16; *see, e.g.*, Bob Nightengale, *Steroid Use Said Rampant in Baseball*, New Orleans Times-Picayune, July 16, 1995, at C1; Bob Nightengale, *Steroids Muscling Their Way Into Baseball, Lack of Testing Fuels Suspicions Among Players*, N.J. Record, July 18, 1995, at Sports 3.

saying that he'd "love to see testing" and future Hall of Fame member Tony Gwynn of the Padres calling steroids "the big secret we're not supposed to talk about . . . ." <sup>211</sup>

Commissioner Selig was quoted in the article as having said that "[i]f baseball has a problem, I must say candidly that we were not aware of it . . . . It certainly hasn't been talked about much." Nightengale reported that, according to Selig, the issue had been discussed among the owners at a meeting eighteen months earlier and that "no one had any evidence that steroid use should be a concern." <sup>212</sup> Kevin Hallinan, baseball's longtime security director who retired in 2007, confirmed that no inquiry was conducted in the wake of this article or other early press reports about the issue.

E. The 1996 Offensive Explosion and Ken Caminiti's MVP

The 1996 season began with an outbreak of hitting so dramatic that Commissioner Selig considered it to be "startling." <sup>213</sup> Immediately, speculation turned to the use of steroids by baseball's big hitters, with pitcher Tim Lincecum saying: "Everybody's blaming the pitchers, but it's smaller strike zones, smaller parks and steroids. That's not a good combination." <sup>214</sup>

In a May 1996 article, Sporting News writer Steve Marantz compared baseball's drug policy to the policies of other sports, concluding that baseball's "failure to screen for

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<sup>211</sup> See Bob Nightengale, *Steroids Becomes an Issue, Baseball: Many Fear Performance-Enhancing Drugs Is Becoming Prevalent and Believe Something Must Be Done*, L.A. Times, July 15, 1995, at C1.

<sup>212</sup> *Id.*

<sup>213</sup> Ross Newman, *Pitchers Hit the Showers in April*, L.A. Times, May 5, 1996, at Sports 10. On the phenomenon generally, see Chuck Johnson, *Season Starts with a Bang*, USA Today, May 1, 1996, at C3; Howard Thomas, *Baseball's Offensive Punch Too Much?*, Capital Times (Madison, WI), May 1, 1996, at B1; John Steigerwald, *Power Play Aren't All These Home Runs Exactly What Baseball Needs?*, Pittsburgh Post-Gazette, May 4, 1996, at B3; Jack Etkin, *Is All This Scoring Good for Baseball? Offense Runs Game in 1990s*, Denver Rocky Mountain News, May 30, 1996, at C15.

<sup>214</sup> Ross Newhan, *Pitchers Hit the Showers in April*, L.A. Times, May 5, 1996, at Sports 10.

steroids” was the most glaring failure of its drug policy. “Look around at baseballs flying over fences, and at the pumped-up torsos swinging bats, and ask yourself if everybody is playing fair.” He quoted Dr. Robert Voy, formerly the physician for the U.S. Olympic team and the author of a book published after the 1988 games that analyzed the steroids problem, who said: “One has to question the sudden prowess of certain athletes. . . . It may come from the weight room, but in my experience weight rooms are where steroid use starts.”<sup>215</sup>

In a July 1996 article in the Pittsburgh Post-Gazette, Ron Cook analyzed the possible explanations for the season of dramatic power hitting. Among other possible reasons, Cook wrote: “There are other factors, to be sure. Hitters are bigger and stronger. (Can you say steroids, ladies and gentlemen).” He quoted Jim Leyland, then the manager of the Pittsburgh Pirates, as saying: “I’d swear on a stack of bibles we don’t have steroids on this team . . . but I wouldn’t know about the rest of baseball.” The article also reported estimates that as many as 35% of major-league players were using steroids and noted that Jose Canseco and Lenny Dykstra had been taunted by fans for their alleged steroid use.<sup>216</sup>

Years later, in a summer 2002 Sports Illustrated article, Ken Caminiti would acknowledge that his breakout offensive performance in 1996 was aided by the use of anabolic steroids.<sup>217</sup> But that revelation was six years in the future in November 1996, when Caminiti was chosen the National League Most Valuable Player in a unanimous vote after hitting 40 home runs and driving in 130 runs.<sup>218</sup>

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<sup>215</sup> Steve Marantz, *Addiction by Distraction*, Sporting News, May 27, 1996, at 10; see Robert Voy, M.D., *Drugs, Sport, and Politics* (Leisure Press 1991).

<sup>216</sup> Ron Cook, *Slam Dance*, Pittsburgh Post-Gazette, June 9, 1996, at D3.

<sup>217</sup> Tom Verducci, *Totally Juiced*, Sports Illustrated, June 3, 2002, at 34.

<sup>218</sup> See Murray Chass, *Caminiti Gets MVP; Williams Gets Traded*, N.Y. Times, Nov. 14, 1996, at 17.



Both Kevin Towers, the Padres general manager at the time, and Larry Lucchino, then the Padres' chief executive officer and president (who is now chief executive officer and president of the Boston Red Sox), said that they were surprised by the 2002 Sports Illustrated revelations of Caminiti's use of steroids. The Padres manager at the time, Bruce Bochy, also claimed never to have suspected Caminiti of using steroids before the 2002 article (although in another article he was quoted saying that the revelations were "certainly not a big surprise").<sup>219</sup> During our investigation, however, a number of Caminiti's former teammates recounted incidents describing his open use of steroids as early as 1995. It appears that Caminiti began researching the possibility of using steroids as early as 1993 or 1994, when he discussed the issue with one of his teammates on the Houston Astros.

One of Caminiti's later Padres teammates, Wally Joyner, acknowledged that he discussed using steroids with Caminiti in 1998, when Joyner was feeling the effects of the game on his aging body. In an interview for this investigation, Joyner told us that he struggled with the decision whether to try steroids, but eventually he decided to use them. After taking the drugs three times, Joyner decided that he had made a mistake, discarded the rest of the pills, and never tried illegal performance enhancing substances again.<sup>220</sup>

F. Reporting on the Issue Continues, 1996-98

Days before the results were announced of voting for the 1996 most valuable player awards, Bob Nightengale wrote another article on the topic, asserting that baseball needed

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<sup>219</sup> See Nick Canepa, *Caminiti's Admission to Sports Illustrated Taints MVP Season*, San-Diego Union-Tribune, May 29, 2002, at D1 ("I'm not surprised – maybe a little bit, I guess, but it's certainly not a big surprise," says Padres manager Bruce Bochy, who was on the bridge during the '96 season when Caminiti carried his team to the NL West title. "Players are using steroids. With Cammy's injuries that year, that rotator cuff injury, and his build no, it doesn't shock me."").

<sup>220</sup> See also Shaun Assael and Peter Keating, *Who Knew? Part II: the Tipping Point, the Friend*, ESPN the Magazine, Nov. 9, 2005.

to “pull its head out of the sand and start checking for steroids” and that the problem was “raging out of control.” “Want to know why there were so many home runs this season?,” Nightengale asked. “It’s not that the pitching is so bad, but that the players are so juiced.” Nightengale observed that the “ones being penalized are the players who refuse to use steroids . . .”<sup>221</sup>

Peter Gammons also revisited the issue in a pre-season roundup before the 1997 season began, reporting that “physicians and GMs are increasingly concerned about steroid use in baseball. As one team physician said last week, ‘The owners won’t do anything about it because the cost of testing for steroids is very high, and they don’t want to face the costs or the circumstances.’” Gammons criticized the Commissioner’s Office for “turn[ing] its back on such issues.”<sup>222</sup>

Other articles appeared throughout the 1997 season.<sup>223</sup> An April 1997 Sports Illustrated article called the use of steroids and other performance enhancing substances, including human growth hormone, the “dirty and universal secret of sports, amateur and pro, as the millennium draws near.” It listed Major League Baseball among the sports where that use

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<sup>221</sup> Bob Nightengale, *Baseball Is One Industry Badly in Need of a CEO*, Sporting News, Mar. 24, 1997, at 22.

<sup>222</sup> Peter Gammons, *Birds Have Feathered Their Nest*, Boston Globe, Mar. 2, 1997, at C8. The suggestion that owners avoided testing because of its high cost has been repeated since then by others who write about baseball. Despite extensive inquiry I found no evidence to support this assertion. All of the owners and other baseball officials I interviewed strongly denied it.

<sup>223</sup> See, e.g., Bob Molinaro, *Steroid Alert: Some Might Be Corking Their Biceps*, Virginia Pilot and Ledger-Star, Mar. 7, 1997, at C1 (“The next scandal in Major League Baseball may relate to steroid use by players, a story that is starting to leak out.”); Bob Nightengale, *Baseball Is One Industry Badly in Need of a CEO*, Sporting News, Mar. 24, 1997, at 22 (“This is an industry so naïve that it still believes steroid use is not a problem when, in fact, it rages out of control.”); John Steigerwald, *Lemieux’s Way Out Mario Just Got Tired of Waiting for NHL to Open Up Game*, Pittsburgh Post-Gazette, Mar. 29, 1997, at C3 (“It has taken longer than it should have, but more and more the media are beginning to realize that Major League Baseball has another major problem beyond the familiar ones: Steroids.”).

was an issue.<sup>224</sup> In a July 1997 article, Ken Caminiti reportedly told the Denver Post that: “There’s a lot of monsters (muscular players) in baseball. You don’t want to tarnish the reputation of the sport, but I don’t think the fans are naïve either.”<sup>225</sup> In August, Jim Bowden, then the general manager of the Cincinnati Reds, told the Rocky Mountain News that there should be testing for steroids in baseball: “I think there’s a lot of people in baseball using steroids, and that’s not fair to those who don’t use steroids.”<sup>226</sup> And a November 1997 article in the Los Angeles Times cited a “well connected source” for the assertion that “half the position players in the major leagues use steroids . . . .”<sup>227</sup>

The public speculation continued into the 1998 season. In a first-person article in the Birmingham News, Detroit Tigers pitcher Todd Jones wrote:

This week’s topic is a tough one to write. I enjoy the game so much it hurts me to defame it, but as a somewhat member of the media, I believe it is my job to tell you the stuff that is uncomfortable for me as a player. I’m talking today about the use and abuse of steroids and uppers. In my time in the big leagues, I’ve never seen anyone take steroids. But I have seen teammates come to spring training 40 pounds heavier, then tell me: ‘Not me, man, I used creatine.’ Yeah, right! I don’t know the exact number, but probably two or three players on every team take ‘roids. More position players take them than pitchers. Steroids I don’t think help arm speed.<sup>228</sup>

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<sup>224</sup> Michael Bamberger and Don Yeager, *Over the Edge: Aware that Drug Testing Is a Sham, Athletes to Rely More than Ever on Banned Performance Enhancers*, Sports Illustrated, Apr. 14, 1997, at 60.

<sup>225</sup> Jerry Crasnick, *Get a Load of This! Baseball Players Are Taking a Powder – Creatine*, Denver Post, July 28, 1997, at D1.

<sup>226</sup> Tracy Ringolsby with Jim Bowden and Alan Meersand, *Drug Policy Skirts the Issue Should Baseball Test for Steroids?*, Denver Rocky Mountain News, Aug. 28, 1997.

<sup>227</sup> Randy Harvey, *The Inside Track*, L.A. Times, Nov. 4, 1997, at Sports 2.

<sup>228</sup> Todd Jones, *Using Drugs Same as Deal with Devil*, Birmingham News, May 31, 1998, at Sports 11.

Similarly, in an article that appeared in early August, days before stories first appeared about Mark McGwire's use of androstenedione, then-Milwaukee Brewers manager Phil Garner told a reporter of his first-hand knowledge of a player's steroid use:

There was one kid, 27, who was cycling steroids, and I asked him, 'Do you realize you could need an artificial heart when you're 40 years old?' . . . He said, 'I don't care what happens at 40. All I want to do is be the biggest, baddest, guy I can be right now.'<sup>229</sup>

In his interview with our investigation, Garner acknowledged that he had known one major league player who used steroids while playing for him, but Garner refused to identify the player because it was more than five years prior to the interview and Garner did not believe it was necessary for this investigation to look that far back in time.

In the same August 1998 article, Mike Spinelli, a former Boston Red Sox minor league player, admitted his use of steroids and was quoted as having said: "I just thank God I was able to get out of this . . . before it killed me." The article noted the lack of a drug-testing program in baseball and reported that "some say, anonymously, that about 30 percent of the hitters include [steroids] in their muscle-building program."<sup>230</sup>

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<sup>229</sup> Alan Truex, *The Creatine Craze / Steroids Mortgage Future for Muscles, Glory*, Hous. Chron., Aug. 11, 1998, at A1.

<sup>230</sup> *Id.*

V. Androstenedione and Baseball's Broadening Awareness of the Use of Performance Enhancing Substances

In late August 1998, Steve Wilstein, an Associated Press reporter who was following Mark McGwire's progress toward a new single-season home run record, noticed a bottle in McGwire's locker labeled "Androstenedione." The ensuing AP news story led to renewed scrutiny of the use of "andro" and other substances by major league players. As previously mentioned, Commissioner Selig and others in baseball have said that this incident more than any other caused them to focus on the use of performance enhancing substances as a possible problem.<sup>231</sup>

Androstenedione is a steroid hormone produced in the body, where it is converted into testosterone.<sup>232</sup> In 1998, "andro" was sold in the United States as a dietary supplement and was available without a prescription. The use of andro was not illegal in the United States, nor was it a prohibited substance under baseball's drug policy at the time.<sup>233</sup> There was debate, however, about whether androstenedione should be considered an anabolic steroid. In 1998, it already was classified as such under Canadian drug laws,<sup>234</sup> and the National Football League,

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<sup>231</sup> See *Restoring Faith in America's Pastime: Evaluating Major League Baseball's Efforts to Eradicate Steroid Use: Hearing Before the H. Comm. on Gov't Reform*, 109<sup>th</sup> Cong. 277, 333 (2005) (statement of Allan H. Selig, Commissioner, Major League Baseball); *id.* at 324 (statement of Sandy Alderson, then-executive vice president for baseball operations, Major League Baseball).

<sup>232</sup> Benjamin Z. Leder, *et al.*, *Oral Androstenedione Administration and Serum Testosterone Concentrations in Young Men*, 283 JAMA 779, 779 (2000). As a result, androstenedione is referred to as a steroid "precursor."

<sup>233</sup> The Dietary Supplement Health and Education Act of 1994 expanded the definition of "dietary supplements," eased restrictions on the sale of certain dietary supplements and placed limitations on the claims that could be made as to the potential benefits of using such substances. See Pub. L. 103-417, 108 Stat. 4325 (1994) (codified at 21 U.S.C. § 321).

<sup>234</sup> See Randy Starkman, *East Germans Pioneered the Use of "Andro," Swimmer: "It was like a volcanic eruption,"* Toronto Star, Aug. 25, 1998, at C2 (noting that androstenedione was then classified as an anabolic steroid under Canada's Controlled Drug and Substances Act).

the International Olympic Committee, and the National Collegiate Athletic Association all banned the substance because of its anabolic effects.<sup>235</sup> Patrick Arnold, the Illinois scientist who later allegedly developed “the clear,” the designer steroid at the center of the BALCO scandal, is credited with being the “father of androstenedione production in the United States.”<sup>236</sup>

When Mark McGwire first was asked about the bottle of androstenedione in his locker, he is reported to have admitted using it, as well as the over-the-counter amino acid supplement creatine, to assist his workout regimen.<sup>237</sup> McGwire was quoted as having said: “Everything I’ve done is natural. Everybody that I know in the game of baseball uses the same stuff I use.”<sup>238</sup> He also reportedly stated that “[i]f somebody tells me that it’s illegal and I shouldn’t be taking it, I will stop.”<sup>239</sup>

The initial public comments from others in baseball generally supported McGwire, with players noting that andro was legal and not prohibited in Major League Baseball and observing that McGwire always had been a power hitter and that strength alone could not account for his home run hitting prowess.<sup>240</sup> St. Louis Cardinals manager Tony La Russa viewed the AP story as an invasion of McGwire’s privacy and said that he would seek to have AP

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<sup>235</sup> Kirk Johnson, *As Drugs in Sports Proliferate, So Do Ethical Questions*, N.Y. Times, Aug. 31, 1998, at C1.

<sup>236</sup> *Id.*

<sup>237</sup> Steve Wilstein, *McGwire Defends Use of Pill Designed to Build Muscle*, Associated Press, Aug. 22, 1998.

<sup>238</sup> *Id.*

<sup>239</sup> Joe Drape, *McGwire Admits Taking Controversial Substance*, N.Y. Times, Aug. 22, 1998, at C3.

<sup>240</sup> *See, e.g.*, Buster Olney, *Opponents Don’t Fault McGwire for Pills*, N.Y. Times, Aug. 5, 1998, at C3; Mike Rutsey, *Strength Drug No Big Deal to Jays*, Toronto Sun, Aug. 23, 1998, at Sports 4 (quoting Jose Canseco and reporting that Canseco was an “androstenedione user himself”).

reporters banned from the Cardinals' clubhouse.<sup>241</sup> The Cardinals organization issued a statement that the club did not object to McGwire's use of the supplement because it had "no proven anabolic effects nor significant side effects."<sup>242</sup> Commissioner Selig told me that he was not aware of andro before the AP story was published, but shortly thereafter he visited his local pharmacy in Milwaukee where the pharmacist directed him to the bottles of the substance that were openly for sale on the shelves.

Coverage of McGwire's use of androstenedione continued for several days after the initial story, with a number of articles questioning whether it would taint the single-season home run record. On August 26, 1998, Commissioner Selig and Don Fehr of the Players Association issued a joint statement in which they stated that the two organizations had asked their medical experts to "gather the relevant scientific and medical data and to consult with other experts on the general use of nutritional supplements by major league players."<sup>243</sup>

Dr. Lewis Maharam, a prominent sports medicine practitioner who is now the race doctor for the New York City Marathon, was a vocal critic, saying that "[i]f McGwire is truly taking this, then he's cheating." He criticized McGwire for failing to warn young athletes about the dangers of using andro.<sup>244</sup> Sometime thereafter, Dr. Maharam received a call from

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<sup>241</sup> See Bernie Miklasz, *AP Story Infuriates La Russa*, St. Louis Post-Dispatch, Aug. 24, 1998, at C1. La Russa told us that he told McGwire privately at the time that he thought it was a shame that the media was trying to take away from his accomplishments. La Russa added that the fact that McGwire's bottle of andro was left in plain sight underscored the fact that McGwire had nothing to hide about his use of the substance.

<sup>242</sup> See William C. Rhoden, *Sports of the Times: Baseball's Pandora's Box Cracks Open*, N.Y. Times, Aug. 25, 1998, at C1.

<sup>243</sup> See Murray Chass, *Baseball Tries to Calm Down A Debate on Pills*, N.Y. Times, Aug. 27, 1998, at C1.

<sup>244</sup> See Tom Keegan, *Slugger's Little Helper Falls Fair*, N.Y. Post, Aug. 24, 1998, at 7; Kirk Johnson, *As Drugs in Sports Proliferate, So Do Ethical Questions*, N.Y. Times, Aug. 31, 1998, at C1.

Dr. Robert Millman, a physician who at the time also served as the medical director for Major League Baseball.

During the call, Dr. Maharam said in an interview, Dr. Millman told him that “everyone in Major League Baseball is irritated with you” and that “if you don’t shut up, they are going to sue you.” Dr. Maharam was unfazed, but a week later he received a second call in which Dr. Millman told him that if he was willing to “shut up in the press,” he would be invited to make a presentation to Major League Baseball and the Players Association about the dangers of steroids and andro. Two weeks later, Dr. Maharam made a one-hour presentation to Dr. Millman, another official from Major League Baseball, and Dr. Joel Solomon, the medical director for the Players Association. Dr. Maharam recalled that, at the conclusion of the meeting, Dr. Millman expressed the view that there was not sufficient medical evidence that andro raised testosterone levels enough to be a cause for concern.

During baseball’s winter meetings in Nashville in December 1998, baseball executives and team physicians heard a presentation from Dr. Millman and Dr. Solomon on baseball’s drug policy. One attendee, Dr. William Wilder, was then the team doctor for the Cleveland Indians. In a memorandum to then Indians general manager John Hart that he wrote after the meeting, Dr. Wilder reported that the presentation focused on the benefits that could be obtained from testosterone. He was disturbed by the presentation, observing in the memorandum that whether or not testosterone increased muscle strength and endurance “begs the question of whether it should be used in athletics.” He believed there was “no reason that some preliminary literature can’t be sent out to the players concerning the known and unknown data about performance enhancing substances,” and recalled that Houston Astros’ team physician Bill



Bryan presented a good overview of these issues with respect to supplements at meetings the previous year.<sup>245</sup> Dr. Wilder reiterated these observations and views in our interview with him.

Bill Stoneman, who retired in 2007 as the general manager of the Los Angeles Angels, had a similar recollection of a presentation by Drs. Millman and Solomon. He remembered wondering at the time why Major League Baseball had permitted the presentation, which to his recollection included the assertion that there was no evidence that anabolic steroids were bad for you. He said that the baseball executives in attendance were universally frustrated with the message of leniency that was being conveyed.

At the meeting, Dr. Wilder discussed the issues directly with Gene Orza of the Players Association, who responded that any effort at education about supplements should wait until additional data were available. Wilder observed in his report that “That will be never! Orza and the Players Association want to do further study . . . so nothing will be done.”<sup>246</sup>

After the events of the 1998 season, Major League Baseball and the Players Association jointly funded a grant for a medical study to determine whether ingesting androstenedione tablets would raise testosterone levels in young adult males. Some had the same reaction to the study that Dr. Wilder had, viewing it as a stalling tactic that allowed widespread use of andro to continue in Major League Baseball despite growing concerns about its safety. A 1999 article cited Orza and others in concluding that “a good number” of major league players – and as many as 5% to 10% by some estimates – were using the supplement a year after the McGwire story broke.<sup>247</sup> The androstenedione study was conducted by several

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<sup>245</sup> See Memorandum from Dr. William Wilder to John Hart, dated Jan. 21, 1998, at 1-2.

<sup>246</sup> *Id.*

<sup>247</sup> See Bill Pennington and Jack Curry, *Andro Hangs in a Quiet Limbo*, N.Y. Times, July 11, 1999, at Sports 1.

prominent endocrinologists who concluded in a paper published in early 2000 that taking certain doses of oral androstenedione did, indeed, increase serum testosterone and other hormone levels in healthy men.<sup>248</sup>

The day that the results of the study were reported, Dr. Maharam wrote to Dr. Millman, urging Major League Baseball to ban andro to set an example for young athletes. After several months had passed and he had not received any response to that letter, Dr. Maharam wrote a second letter in which he offered his assistance to develop a steroids awareness program for baseball players.

Thereafter, Dr. Maharam told us, he received a telephone call from Dr. Millman. Dr. Millman said that he was very proud of the andro study. He reported that the Commissioner's Office was in the process of banning the use of androstenedione in baseball's minor leagues but that the Players Association objected to a similar ban for players on major league rosters. At Dr. Millman's invitation, Dr. Maharam visited a number of minor league clubs in Florida to discuss the hazards associated with the use of steroids and androstenedione and explain why andro was being banned in the minor leagues.

As noted above, the 2002 Basic Agreement included for the first time a mandatory random drug testing program in Major League Baseball. It also banned the use of anabolic steroids by players on the 40-man rosters of the major league clubs. However, that agreement did not prohibit the use of androstenedione, despite the conclusion of the study two years earlier that andro raised testosterone levels. Instead, the parties agreed "that they [would] encourage Congress to revisit the question whether androstenedione should be categorized a

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<sup>248</sup> Benjamin Z. Leder, et al., *Oral Androstenedione Administration and Serum Testosterone Concentrations in Young Men*, 283 JAMA 779, 782 (2000); see John Fauber, "Andro" pill found to increase testosterone like anabolic steroid, Milwaukee J. Sentinel, Feb. 9, 2000, at A1.

Schedule III substance,” which would result in including andro among the program’s prohibited substances.<sup>249</sup> That year, however, andro was added to the list of prohibited substances under the minor league drug program.<sup>250</sup>

In January 2004, the United States Anti-Doping Agency announced that Derrick Turnbow, a pitcher who then played for the Anaheim Angels, failed a drug test administered during training camp for the U.S. Olympic baseball team the previous October. In its announcement, USADA said that Turnbow had tested positive for “a steroid violation, which resulted from taking nandrolone, norandrostenedione or norandrostenediol.”<sup>251</sup>

Turnbow was subjected to a two-year ban from international competition, but he was not disciplined under the Major League Baseball joint drug program. According to statements by Gene Orza, chief operating officer of the Players Association, Turnbow had tested positive as the result of taking androstenedione, which was not a prohibited substance under the Major League Baseball joint drug program at the time. Orza reportedly said: “Derrick Turnbow did not test positive for a steroid. He tested positive for what the [International Olympic Committee] and others regard as a steroid, but the U.S. government does not.”<sup>252</sup>

Later in 2004, Congress passed the Anabolic Steroids Control Act of 2004, under which (among other things) the definition of anabolic steroids was amended to include androstenedione and other substances, which thereby were added to Schedule III of the

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<sup>249</sup> See Major League Baseball’s Joint Drug Prevention and Treatment Program, § 2(C)(2) (2002).

<sup>250</sup> See Memorandum from Commissioner Selig to All General Managers, Farm Directors, Club Physicians and Employee Assistance Professionals Re: Minor League Drug and Steroid Testing, dated Jan. 2, 2002.

<sup>251</sup> See Associated Press, *Pitcher receives two-year international ban*, espn.com, Jan. 6, 2004.

<sup>252</sup> *Id.*

Controlled Substances Act.<sup>253</sup> As a result, those substances automatically became substances that were banned under the Major League Baseball joint drug program.

In the spring of 2006, shortly after this investigation was announced, Dr. Maharam received another call from Dr. Millman, who was by then no longer affiliated with Major League Baseball. According to Dr. Maharam, during that call, he said that he planned to speak with Senator Mitchell's investigative team. Dr. Millman replied that he should be careful what he said about Major League Baseball because "[t]hey have a lot of power." Dr. Millman did not respond to repeated requests by telephone and in writing to be interviewed as part of this investigation.

In his memoir *Juiced*, Jose Canseco discussed the 1998 andro story and made repeated allegations about McGwire's use of steroids. Canseco asserted that he was treated differently than McGwire because of his Cuban heritage even though, according to Canseco, both he and McGwire allegedly used steroids to enhance their performance.

After Canseco's allegations about McGwire appeared, the House Committee on Government Reform included both McGwire and Canseco among the current or former players that it subpoenaed to appear for a hearing held on March 17, 2005. At the hearing, McGwire said that he would not "dignify Mr. Canseco's book" with a response and that his lawyers had advised him that "I cannot answer these questions [about steroids use in baseball] without jeopardizing my friends, my family and myself."<sup>254</sup> McGwire refused to answer a number of

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<sup>253</sup> Anabolic Steroid Control Act of 2004, Pub. L. No. 108-358, 118 Stat. 1661 § 2(a)(1)(B) (2004) (codified as amended at 21 U.S.C. § 802-11). As noted above, the androstenedione precursor DHEA was excluded from the amendment and therefore was not added as a prohibited substance under the program. *See supra* at 24.

<sup>254</sup> *Restoring Faith in America's Pastime: Evaluating Major League Baseball's Efforts to Eradicate Steroid Use: Hearing Before the H. Comm. on Gov't Reform, 109<sup>th</sup> Cong. 220* (2005).

specific questions from members of the committee, stating repeatedly that he was “not here to talk about the past.”<sup>255</sup> His testimony, broadcast live on television, was widely criticized. Many writers later expressed the view that McGwire’s lack of candor was a significant reason for his surprisingly low vote total in early 2007 in his first year of eligibility for election to the National Baseball Hall of Fame.<sup>256</sup>

During the course of this investigation, we interviewed a number of coaches, club personnel, former teammates, and other persons who know McGwire. Only Canseco, who repeated the allegations from his memoir, said he had knowledge of McGwire’s alleged use of steroids. Through his personal lawyer, I asked McGwire to meet with me for an interview about these issues, but he declined to do so. I then sent his lawyer a list of specific questions about whether McGwire had ever used steroids or other performance enhancing substances without a prescription during his major league career, in the hope that McGwire would be willing to provide a response outside of the context of an interview. Neither McGwire nor his lawyer responded to that letter. (I sent similar letters with specific questions to lawyers for Barry Bonds, Rafael Palmeiro, Sammy Sosa, and Gary Sheffield, none of whom provided answers to my questions either.)

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<sup>255</sup> *Id.* at 242-43, 264, 266, 273.

<sup>256</sup> *See, e.g.,* Jack Curry, *2 Stars Leap to Hall of Fame, But Steroid Cloud Stops 3rd*, N.Y. Times, Jan. 10, 2007, at A1.

VI. Incidents Providing Evidence to Baseball Officials of Players' Possession or Use of Performance Enhancing Substances

The September 2003 raid by federal agents on the offices of the Bay Area Laboratory Co-Operative, discussed in the next chapter, marked another turning point in the general awareness of illegal performance enhancing substance use in Major League Baseball. Both before and after that raid, however, a number of other less prominent or unpublicized incidents placed evidence of that conduct in front of officials in the Commissioner's Office, the Players Association, and some of the thirty clubs.

In some incidents, club personnel did not report evidence to the Commissioner's Office of a player's possible involvement with performance enhancing substances but instead simply disposed of the evidence. Most often, however, evidence was reported. The responses to the incidents by the senior officials in the Commissioner's Office who were responsible for these issues evolved over the years from 2000 to the present. In responding to earlier incidents, baseball officials appear to have been focused on maintaining labor peace with the Players Association and keeping information about a player's potential involvement with these substances out of the press. Many of the earlier incidents were not investigated vigorously or, in some cases, at all.

Instead, in earlier incidents during this period, over 25 players who were implicated in the potential use of illegal drugs were subjected to informal "reasonable cause" drug testing for performance enhancing substances. The tests – when they occurred – were administered only after extended negotiations with the Players Association, a process that virtually guaranteed a negative test result. No major league player ever tested positive for steroids or any other performance enhancing substance in any of these tests. In addition, under the informal arrangement with the Players Association under which these "reasonable cause"

tests were administered, the Commissioner's Office gave up the ability to interview a suspected player in exchange for the agreement to subject that player to a "reasonable cause" test.

With few exceptions, until recently active major league players have not been interviewed by baseball officials about the alleged use of steroids or other performance enhancing substances. Under the Basic Agreement, the Players Association is entitled to advance notice of any player interview.<sup>257</sup> According to Kevin Hallinan, baseball's director of security for 21 years before his retirement in November 2007, the Players Association has resisted efforts to interview players in connection with allegations about steroid use even though it has permitted interviews of players in other contexts.

At the same time, the Commissioner's Office rarely pressed for such interviews, for several reasons. First, they believed that the Players Association would resist investigatory interviews based on its reading of the Ferguson Jenkins arbitration decision. Aggressive pursuit of evidence of illegal performance enhancing substance use might have threatened to further destabilize already difficult relations between club owners and the Players Association. During the decade when the use of performance enhancing substances grew dramatically in Major League Baseball, the game was recovering from a work stoppage that shortened the 1994 season and resulted in cancellation of the World Series. Many of the economic challenges that led to that stoppage continued after play resumed and a new collective bargaining agreement was signed. In this larger context, preventing the use of steroids and other illegal performance enhancing substances in professional baseball received a lower priority than economic matters.

Second, some senior baseball officials doubted the usefulness of player interviews. In the words of Rob Manfred, executive vice president for labor relations,

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<sup>257</sup> See, e.g., 2007 Basic Agreement Between the 30 Major League Clubs and the Major League Baseball Players Association, Art. XII(E) (notice of interviews).

“interviewing players is not a productive exercise – there are no rats and players are not going to confess.” Manfred explained that “baseball is different from other industries because of the team mentality. These guys live together for 220 days a year.” This, in Manfred’s view, is the root cause of baseball’s clubhouse “code of silence.” It is a view shared by many of those we interviewed in this investigation.

In the course of this investigation, examples of the “code of silence” were abundant. A number of witnesses, for example, claimed that they knew nothing about steroids, never saw anything involving steroids, and had never even heard the word “steroids” used in a major league clubhouse, not even in connection with such high-profile issues as the leaked BALCO grand jury testimony, the publicity about Barry Bonds, the March 2005 congressional hearings, Rafael Palmeiro’s failed drug test thereafter, or the Jason Grimsley search warrant affidavit in June 2006.

In our interview of him, one former player told of annual players-only meetings during which teammates reminded one another that any personal information they learned during the season needed to be kept in “the family.” He said that players understood that a failure to abide by this unwritten rule would sound the death knell for their careers. Through his lawyer, another former player who admitted his own use of performance enhancing substances claimed that his career as a major league coach would be harmed “perhaps fatally” if he were required to identify other players who had admitted to him that they had used steroids.

Interviews of non-player employees, and of other witnesses who might have knowledge of a player’s illegal use of performance enhancing substances, are not governed by baseball’s collective bargaining agreement (which applies only to major league players) but are still affected by the “code of silence.” Nevertheless, in the instances in which investigations



included interviews of such witnesses, baseball officials were able to learn important information about the potential sources of illegal performance enhancing substances for players in Major League Baseball.

More recently, after this investigation began, the Commissioner's Office – with the consent of the Players Association – has interviewed several active players who have been mentioned in reports about law enforcement investigations relating to illegal distribution of steroids and human growth hormone. This emerging practice, which was followed as to several players during 2007, suggests that a new approach has developed. It is an improvement over past practice.

Whatever the underlying reasoning, in hindsight it is likely that baseball's less than vigorous response to earlier incidents resulted in some missed opportunities to learn more about the illegal use of performance enhancing substances in professional baseball and the sources of those substances. At the same time, reviewing these incidents chronologically shows a clear evolution in the approach followed when evidence emerged of a player's involvement with those substances, demonstrating an increasing responsiveness to the issue as awareness was heightened by the BALCO investigation and subsequent law enforcement efforts.

I asked to meet with all of the players about whom allegations of their possession or use of performance enhancing substances are discussed in this chapter in order to provide them with information about those allegations and to give them an opportunity to respond. With few exceptions that are noted below, none of them agreed.

A. Operation Equine

In the summer of 1995, Special Agent Gregory Stejskal of the Federal Bureau of Investigation attended a seminar in Quantico, Virginia that was also attended by officials from

Major League Baseball. There, Stejskal told us, he met Kevin Hallinan, the senior vice president for security in the Commissioner's Office, who he told about Operation Equine, a nationwide investigation that he had been conducting since 1989 into the illegal distribution of steroids. Stejskal said that he told Hallinan he had information that players in Major League Baseball, including Jose Canseco, were illegally using anabolic steroids and that he believed the illegal use of steroids in baseball was "pervasive."<sup>258</sup> Hallinan told us that he does not remember being approached by Stejskal in 1995 and asserts that he would have pressed Stejskal for information on the subject if it had been raised with him then.<sup>259</sup>

In June 2002, Stejskal called Hallinan to follow up on the issue. Hallinan asked his deputy Martin Maguire to pursue the lead. In response, Maguire spoke with Stejskal and also with Curtis Wenzlaff, a convicted steroids trafficker who had been Stejskal's informant. In his phone interview with Maguire, Wenzlaff claimed to have personally supplied steroids to a number of major league players in the past, including but not limited to Canseco. Maguire did not create a record of his conversations with Stejskal or with his informant, Wenzlaff, because, he told us, the information did not specifically implicate any players who were then active at the major league level.

In our own interview of him, Wenzlaff acknowledged that he had dealt with 20 to 25 players in Major League Baseball before he was convicted for illegal distribution of steroids in 1992. He was not willing to divulge to us the names of major league players to whom he supplied steroids other than Canseco (who had by then admitted his own use). In our interview

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<sup>258</sup> See also Christian Red, Michael O'Keefe and T.J. Quinn, *FBI agent hits MLB on 'roids*, N.Y. Daily News, Feb. 15, 2005, at 57.

<sup>259</sup> See also *id.*

of him, Canseco denied that he had obtained steroids from Wenzlaff but acknowledged that he had met him.

Maguire recalled that at some later point he asked Hallinan whether he should investigate allegations that were appearing in the press concerning Jose Canseco's illegal use of steroids. Hallinan said that "[he] knew Canseco and didn't see any opportunities to be pursued."

B. Steroids Found in Boston Red Sox Player's Car, June 2000

On June 30, 2000, a clubhouse employee of the Boston Red Sox, Carlos Cowart, and a friend of his were sitting in Manny Alexander's parked sports utility vehicle when they were approached by Massachusetts state police officers. Alexander, then a utility infielder with the Red Sox, was away with the team. The officers suspected that the car had been stolen, but, in fact, Alexander had loaned it to Cowart while the team was away.

During a search of the vehicle, police discovered two hypodermic needles and a bottle of anabolic steroids in the glove compartment. At least one news report stated that the steroids were in an envelope addressed to Alexander, although we were not able to confirm that assertion.<sup>260</sup> The police applied for two criminal complaints against Alexander, for possession of Class E anabolic steroids and for possession of hypodermic needles. Neither Cowart nor the friend who was with him was charged with any offense. On February 28, 2001, the charges against Alexander were dismissed for "insufficient evidence having been presented after hearing."<sup>261</sup>

Following the initial report of the discovery of steroids in Alexander's car, Rob Manfred of the Commissioner's Office negotiated with Gene Orza of the Players Association to

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<sup>260</sup> See James C. McKinley Jr., *Guessing the Score: Open Secret – A Special Report: Suspicions Abound in Major League Dugouts*, N.Y. Times, Oct. 11, 2000, at A1.

<sup>261</sup> See Application for Complaint, dated Aug. 4, 2000 (containing subsequent handwritten notes indicating dismissal).

subject Alexander to a “reasonable cause” drug test for steroids. The Players Association and Alexander ultimately agreed to such a test, but because negotiations were lengthy the urine test was not administered until approximately 45 days after the incident. The test was negative for steroids.<sup>262</sup> According to Manfred, all evidence of the test was destroyed.

The Commissioner’s Office closed its investigation without determining who had been responsible for the anabolic steroids and hypodermic needles being in the vehicle. No one from the Commissioner’s Office interviewed either Cowart or Cowart’s friend about the incident or their knowledge concerning the steroids and syringes. Alexander also was not interviewed because, in Manfred’s words, “[t]his was the price of reasonable cause testing.”

C. Discovery of Steroids in Florida Marlins Player’s Locker, June 2000

In late June 2000, a clubhouse attendant with the Florida Marlins brought a paper bag to the club’s athletic trainers that had been found in the locker of Marlins pitcher Ricky Bones. The bag contained over two dozen syringes, six vials of injectable medications – stanozolol and nandrolone decanoate, two anabolic steroids that are sold under the names Winstrol and Deca-Durabolin, respectively – and a page of handwritten instructions on how to administer the drugs. Soon thereafter, the athletic trainers returned the bag and its contents to Bones at his request.

Bones is now employed by a minor league affiliate of the New York Mets and so was required by the Commissioner to meet with us. In his interview, he acknowledged the incident and explained that he had been self-administering steroids and painkillers pursuant to prescriptions that he obtained from a physician in his hometown in Puerto Rico. At the time,

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<sup>262</sup> See *Restoring Faith in America’s Pastime: Evaluating Major League Baseball’s Efforts to Eradicate Steroid Use: Hearing Before the H. Comm. on Gov’t Reform, 109<sup>th</sup> Cong. 86* (2005).

Bones had a degenerative hip condition that later led him to retire from baseball and, in 2003, to undergo dual hip replacement surgery.<sup>263</sup>

While this incident occurred before the 2002 Basic Agreement, baseball's drug policy at the time nevertheless: expressly prohibited "[t]he possession, sale or use of any illegal drug or controlled substance by Major League players and personnel"; expressly included anabolic steroids among the substances that were subject to this prohibition; required any player who was taking a drug pursuant to a physician's prescription "to notify the team physician of this fact and of the drug(s) prescribed"; and required clubs to report "any information concerning drug use by a player" to the Commissioner's Office.<sup>264</sup>

The athletic trainers' initial reaction not to report the discovery of steroids in a player's possession did not comply with this policy. The next day, however, the matter was brought to the attention of Dave Dombrowski, the Marlins' general manager, who immediately reported it to the Commissioner's Office, which said its staff would "take it from here."

According to Bones, several weeks after the incident he was asked by the Players Association to attend a brief meeting with Dr. Joel Solomon of the Players Association and another physician, likely Dr. Robert Millman. The physicians reviewed the pros and cons of using steroids and asked whether Bones was having any problems in his personal life. Bones said that his family life was fine. No physical examination was conducted by either physician. Bones also was subjected to a "reasonable cause" urine test several months after the incident.

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<sup>263</sup> Bones granted us an express waiver of any claim of medical privacy as to this information for purposes of this investigation.

<sup>264</sup> See Memorandum from Bud Selig, Chairman of the Executive Council of Major League Baseball, to All Major League Clubs, etc. Re: Baseball's Drug Policy and Prevention Program, dated May 15, 1997.

Bones never heard that the test showed steroids in his system and therefore assumes that it was negative.

Rob Manfred confirmed that after he learned about the incident he contacted Gene Orza of the Players Association and sought his agreement to “reasonable cause” drug testing of Bones. Manfred did not advise anyone in the security department about the incident because it was “heading down the reasonable cause testing path.”

D. Shipment of Steroids to Arizona Clubhouse, September 2000

Sometime in mid-September 2000, a clubhouse employee with the Arizona Diamondbacks discovered a bottle of anabolic steroids and several hundred pills in a package that had been mailed to the Diamondbacks’ ballpark in Phoenix. Clubhouse attendants knew that the package had been intended for Alex Cabrera, then a player on Arizona’s major league roster, who had been searching for the package for several days. They gave the box to the team’s athletic trainer and told Cabrera that the package probably had been lost.

After he learned of the incident, Joe Garagiola, Jr., the Diamondbacks’ general manager at the time, reported the discovery to the Commissioner’s Office. The Commissioner’s Office retrieved the package and sent the drugs to the Drug Enforcement Administration for evaluation, which confirmed that the vial contained Winstrol (stanozolol), an injectable anabolic steroid, and that the pills in the box were over-the-counter diet pills.<sup>265</sup>

By the time the DEA confirmed that the shipment to Cabrera had contained steroids, his contract had been sold to the Seibu Lions in the Japan League. Manfred therefore did not seek permission from the Players Association to subject Cabrera to “reasonable cause” testing for steroids.

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<sup>265</sup> Letter from Special Agent Lewis Rice Jr. to Kevin M. Hallinan, dated Oct. 16, 2000.

With “reasonable cause” testing unavailable, Hallinan and his staff were given clearance to conduct an investigation into the shipment. Using a combination of local private investigators and employees of the Commissioner’s Office, baseball conducted a substantial investigation over the following several months that included interviews of several witnesses in both the United States and Venezuela, including ultimately Cabrera, who asserted that he did not know why a package addressed to him from Martinez contained “greenies” and steroids. As a result of the investigation, the security department learned that players with the El Paso Diablos, a minor league affiliate of the Diamondbacks, regularly crossed the border into Mexico to purchase steroids.

Manfred and his then-deputy Frank Coonelly of the labor relations department would not agree to seek permission from the Players Association to interview active major league players who might have had relevant information about the incident, telling security director Kevin Hallinan that it would be “tough sledding” to get the Players Association to agree to those interviews. As a result of the investigation, the security department held training sessions for minor league teams in El Paso, Wichita, and Tulsa about the dangers of steroids and of hangers-on who might facilitate the illegal purchase of steroids.

E. Canadian Border Service Seizure of Steroids in Toronto, October 2001

On the evening of October 4, 2001, Canadian Border Service officers working at Toronto’s international airport discovered steroids, syringes, and clenbuterol in an unmarked duffel bag during an airport search of luggage that had been unloaded from the Cleveland Indians flight from Kansas City.<sup>266</sup> Ted Walsh, the Indians equipment and clubhouse manager

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<sup>266</sup> Facsimile from Adelia Piazza to Rob Manfred, dated Oct. 22, 2001. See also T.J. Quinn, Michael O’Keefe & Christian Red, *Bag Men: Gonzalez & trainer linked to 2001 steroid probe*, N.Y. Daily News, July 30, 2006, at 96. Clenbuterol is not an anabolic steroid, but it is

who was present during the search, recognized the bag as one that had been sent down to be included with the luggage by Cleveland outfielder Juan Gonzalez when the Indians left Kansas City. On prior trips, Gonzalez had included bags for members of his entourage with his own bags, and Walsh had the impression that this was the case with some of the bags he sent down to be packed for the Toronto flight.

The customs officials requested Walsh to bring all of the luggage except the bag in question to the team hotel as normal, which he did. The Indians resident security agent, Jim Davidson, who was traveling with the team because of heightened security after the attacks of September 11, 2001, met with local law enforcement officers in the hotel lobby. Mark Haynes, the Canadian Border Service officer in charge of the investigation, told Davidson that syringes and anabolic steroids had been found in the bag and that officers were going to replace the bag with the Indians luggage to see who claimed it. Haynes also opened the bag and showed Davidson the hypodermic needles, ampules, and other paraphernalia.

Thereafter, Davidson, Haynes, and other officials watched the luggage as Joshue Perez, a member of Juan Gonzalez's entourage, claimed the duffel bag. With Davidson present, Haynes and other officers took Perez to an anteroom, where he told them that the bag belonged to Angel ("Nao") Presinal, Gonzalez's personal trainer, who would be arriving in Toronto on a later flight.

As soon as he arrived at the hotel, Presinal was detained by law enforcement officers. In an interview at the hotel, Presinal denied that the bag belonged to him and asserted that it belonged to, and had been packed by, Gonzalez. Haynes and Toronto police officers then

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used by bodybuilders in the belief that it helps them to become leaner. It is a veterinary medicine that is not approved for use by humans in the United States. *See* R.C. Kammerer, *Testing in Sport & Exercise, in Performance-Enhancing Substances in Sport & Exercise* 323, 331 (Michael S. Bahrke and Charles E. Yesalis eds. 2002).



went to Gonzalez's room to question him about the bag. Although he had been present for the interview of Presinal, Davidson was not invited to attend the interview of Gonzalez. After that interview, Haynes reported that Gonzalez had denied any knowledge about the bag's contents and claimed that he had sent it down to be included with the team's luggage at Presinal's request.

According to Davidson's account of the incident, during further questioning Presinal admitted that he had packed the steroids but claimed that he carried them for Gonzalez, whom he helped to administer them. Davidson reported that Presinal also claimed to have assisted several other high-profile major league players in taking steroids. In our interview of him in 2007, Presinal denied that he made any such statements. He asserted that he has no knowledge of the involvement of any player in Major League Baseball with anabolic steroids or other performance enhancing substances.

The next day, Davidson and Toronto's resident security agent Wayne Cotgreave had a conference call with Kevin Hallinan of the Commissioner's Office's security department and members of his staff. Hallinan said that the matter would be handled from the Commissioner's Office in New York. Although Hallinan told Davidson that his office would investigate the matter, there is no evidence that such an investigation ever was conducted beyond a search for Presinal's Cleveland address. None of the eyewitnesses whom we interviewed during the course of our investigation was contacted by anyone about the incident until a news report about it appeared in July 2006. Davidson was never asked to perform any follow-up work with respect to the matter.

Rob Manfred told us that he did not believe a strong case could be made for "reasonable cause" testing of Gonzalez because of conflicting statements by Presinal, Gonzalez, and others about who the bag and steroids belonged to. Manfred nevertheless contacted Gene

Orza of the Players Association about testing Gonzalez, but Orza refused to agree in this instance. Manfred did not ask Orza for the Players Association's permission to interview Gonzalez because he thought such an interview would be fruitless even if the Players Association agreed to it.

According to the July 2006 article, Presinal was "declared a pariah" by the Commissioner's Office after the events in Toronto in 2001, an assertion that Hallinan repeated in our interview of him.<sup>267</sup> By early in the 2002 season, however, Presinal was observed in and around the clubhouse of the Texas Rangers (where Juan Gonzalez was playing at the time). Sign-in records indicate that Presinal was in the Rangers clubhouse frequently that season. The Rangers also reserved (but did not pay for) rooms for Presinal at the club's hotels that season. The Rangers' general manager, John Hart, was aware of the October 2001 incident and Presinal's alleged role in it, since Hart joined the Rangers from the Indians after the 2001 season and supported the Rangers' decision to sign Gonzalez in 2002. In the summer of 2005, Presinal was profiled by Bill Shaikin of the Los Angeles Times for his in-season training of Bartolo Colon of the Los Angeles Angels.<sup>268</sup>

After Presinal was spotted in the Rangers clubhouse in 2002, Major League Baseball's security department alerted all clubs and removed Presinal from the Texas ballpark; he also was removed from the ballpark in Anaheim when he later was spotted there.

Presinal remains a prominent personal trainer for a number of professional baseball players, operating out of facilities in the Dominican Republic. He also has worked with players during the season in the United States. He was selected by the Dominican Baseball

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<sup>267</sup> See T.J. Quinn, Michael O'Keefe & Christian Red, *Bag Men: Gonzalez & trainer linked to 2001 steroid probe*, N.Y. Daily News, July 30, 2006, at 96.

<sup>268</sup> See Bill Shaikin, *Colon Trying to Tip the Scales*, L.A. Times, July 12, 2005, at D6.

Federation to serve as a trainer for the Dominican Republic national team during the inaugural World Baseball Classic in spring 2006, which included on its roster a number of players and coaches from Major League Baseball.

F. Bullpen Catcher Admits to Supplying Steroids to Eight Major League Players, September 2002

On September 26, 2002, during a game against the Florida Marlins at Montreal's Olympic Stadium, Montreal's bullpen catcher Luis Perez asked a Marlins clubhouse attendant if he would carry a duffel bag back to Florida for him. The Marlins employee, who knew Perez from his previous tenure as a bullpen catcher with the Marlins, agreed. Perez later delivered a large padlocked duffel bag to be included with the Marlins luggage. Marlins equipment manager John Silverman was suspicious because of the padlock and directed that the bag be opened. When it was (using a combination that Perez provided), Silverman and the clubhouse attendant discovered a box coated on the inside with pine tar that contained two plastic packages amounting to one pound of marijuana.

The Montreal police were called. That evening, Perez was interviewed by telephone by Kevin Hallinan, the Commissioner's senior vice president for security, and other baseball officials, who advised that "the legal process should take its course and that [security] would contact him once the authorities were completed with their work." Montreal police interviewed Perez and arrested him for possession of marijuana. Perez ultimately received a \$5,000 fine for the violation.

After the criminal process had ended, Hallinan and his deputy, Martin Maguire, traveled to Miami to interview Perez. Perez explained that during his time as a bullpen catcher for the Florida Marlins, between 1998 until 2001, two players asked if he could obtain steroids for them. After he was successful in doing so, word spread and he became a source for players

to acquire steroids and other drugs. Perez alleged that he had witnessed widespread use of steroids and other drugs. According to Hallinan's memo, Perez told baseball officials ". . . that virtually every player on the Marlins was 'doing something' ranging from steroids and greenies, to marijuana, etc. He also claimed that every pitcher in Montreal's bullpen was on some form of steroid."

Perez told Hallinan that when teams were in San Diego, players often crossed the border into Mexico to obtain illegal substances. He said that he knew of clubhouse employees with other teams who were similarly called upon to obtain drugs for players, including in particular a visiting clubhouse attendant in Philadelphia.<sup>269</sup> Perez also claimed that he was paid as much as \$500 by certain players to carry their bags on trips to and from Canada.

At the conclusion of their interview of him, Perez's lawyer handed to Hallinan and Maguire a typed list of players and their "drug of choice" that had been compiled by Perez. The list identified eight players (with the Marlins, Astros, and Expos) for whom Perez personally had acquired anabolic steroids, in addition to identifying twelve players for whom Perez had obtained other drugs.

Hallinan and Maguire both said that they regarded Perez as a credible witness. Hallinan told us that the Perez incident could have been the "single most important steroids investigation" he conducted, but to his disappointment he was not given permission to interview the major league players named by Perez.

We made a number of attempts to contact Perez, all without success. Because neither I nor any member of my staff had the opportunity to make our own assessment of Perez's

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<sup>269</sup> Based on Perez's interview, Maguire later interviewed a Phillies clubhouse attendant who denied that he had any involvement in procuring drugs for players.

credibility, or to otherwise corroborate his statements, I have not identified the players for whom Perez allegedly obtained steroids, with one exception discussed later in this report.

Although no players were interviewed about their alleged involvement with steroids or other drugs after the Perez interview, the players identified by Perez were evaluated by Dr. Millman and Dr. Solomon, and thereafter those players were subjected to “reasonable cause” drug tests. The tests were conducted long after the allegations were made. None of the players tested positive for the use of performance enhancing substances.

G. Infielder Disciplined For Steroids Shipment, July 2004

In early June 2004, an athletic trainer for a minor league team opened a package addressed to the team from another, affiliated team in the minor leagues. Inside he found a pair of slightly worn shoes in which were packed batting gloves and a pair of socks. Wrapped inside one of the socks was a vial containing a white, milky substance that was labeled in Spanish. The trainer reported the discovery to the front office of his team’s major league affiliate, which determined through a test that the substance was stanozolol (Winstrol), an anabolic steroid.

The major league club immediately contacted their outside lawyer. He conducted an investigation of the incident in which he concluded that the substance had been shipped by Player X, a minor league player who was on the major league club’s 40-man roster at the time. (After the incident but before this investigation began, a settlement agreement was reached among the Commissioner’s Office, the major league club, and the Players Association, under which we are not permitted to identify Player X in this report).

The club's lawyer prepared a memorandum describing his investigation and findings, which he sent to Frank Coonelly in the Commissioner's Office.<sup>270</sup> Coonelly and Rob Manfred decided to interview the player who was the intended recipient of the package in the first instance because, as a minor league player, they could do so without notifying the Players Association. That player "had no problem confirming immediately" that he had received the package containing the steroids from Player X.

Coonelly then informed Michael Weiner, the general counsel of the Players Association, that he and Manfred intended to interview Player X two days later. Coonelly also informed Weiner that the Commissioner's Office was considering disciplinary action against Player X. The next day, Weiner objected to the interview on such short notice and reported that Player X did not consent to be interviewed.

No interview was ever conducted of Player X in connection with the matter. Nor was Player X suspended. Instead, the Players Association entered into a settlement agreement with the Commissioner's Office under which Player X was separated immediately from his minor league club and was provided a first-class airplane ticket home. The settlement agreement also provided that if Player X came to spring training in 2005, he would be required to submit to a urine test for steroids, and if that test was negative he would thereafter be subject to the standard drug testing program faced by all other players.

The settlement agreement required the major league club and the Commissioner's Office to keep its terms confidential and required the club to report only that Player X had left his team "for personal reasons." Player X had the right to void the settlement if any press report

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<sup>270</sup> In September 2007, Coonelly was hired as chief executive officer of the Pittsburgh Pirates.

suggested that his departure from the club was related to steroids (or any other “Prohibited Substance” under the joint drug program).

H. Cooperation with Law Enforcement Investigation, Late 2004

Recent, well-publicized events have shown the importance of cooperation between sports leagues and law enforcement investigations with respect to athletes’ use of performance enhancing substances. The Commissioner’s Office has cooperated in at least one such investigation before 2007.

Beginning in October 2004, senior officials in both the labor and security departments of the Commissioner’s Office cooperated with a law enforcement investigation into an individual who was allegedly involved in providing illegal performance enhancing substances to professional athletes and others. At the request of law enforcement officials, I am unable to provide further details about the investigation, or the cooperation of the Commissioner’s Office with it, because the investigation is still ongoing.

I. Investigation Following Rafael Palmeiro’s Positive Drug Test, May 2005

On August 1, 2005, Major League Baseball announced that Baltimore Orioles first baseman and designated hitter Rafael Palmeiro had violated the league’s joint drug program and would be suspended for 10 games.<sup>271</sup> Palmeiro subsequently acknowledged that he had tested positive for the anabolic steroid stanozolol, the generic name for Winstrol, but he repeatedly denied that he had ever “intentionally taken steroids.”<sup>272</sup>

Palmeiro’s failed test result was until that time the most newsworthy suspension under the joint drug program, given his career achievements. It prompted an immediate

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<sup>271</sup> Press Release, Major League Baseball, *Rafael Palmeiro Suspended 10 days* (Aug. 1, 2005).

<sup>272</sup> See Jack Curry, *Palmeiro Ends Silence on the Eve of a Report*, N.Y. Times, Nov. 10, 2005, at D1.

congressional investigation into whether Palmeiro had committed perjury when he testified at a March 17, 2005 hearing of the House Committee on Government Reform that:

Let me start by telling you this: I have never used steroids, period. I do not know how to say it any more clearly than that. Never. The reference to me in Canseco's book is absolutely false.<sup>273</sup>

In his book, *Juiced*, Canseco claimed that he had personal knowledge that Palmeiro and two other players illegally used steroids under his supervision shortly after he joined the Texas Rangers in 1992.<sup>274</sup>

The congressional investigation ultimately concluded that it was impossible to determine whether Palmeiro had been telling the truth in his sworn testimony because, among other things, the four-week detection window for Winstrol was not long enough to conclude that Palmeiro had the steroid in his system at the time of his testimony, given the date of his urine test in May 2005.<sup>275</sup>

Of significance to our investigation, however, was the information learned during the course of the congressional investigation concerning the widespread and apparently open and obvious self-administration, using hypodermic needles, of an unregulated substance imported from the Dominican Republic labeled as vitamin B12. Congressional investigators looked into the issue because Palmeiro told them that he had used injectable vitamin B12 provided to him by

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<sup>273</sup> H. Comm. on Gov't Reform, *Report on Investigation Into Rafael Palmeiro's March 17, 2005 Testimony Before the Comm. on Gov't Reform*, at 5 (109<sup>th</sup> Cong. 2005) ("Palmeiro Report").

<sup>274</sup> Jose Canseco, *Juiced: Wild Times, Rampant 'Roids, Smash Hits and How Baseball Got Big* 135 (Regan Books 2005).

<sup>275</sup> Palmeiro Report at 42.



his Orioles teammate Miguel Tejada and that this might have been the reason for his positive steroid test.<sup>276</sup>

According to the House Committee's report, Tejada told investigators that he generally brought injectable vitamin B12 with him to the United States when he returned each season from the Dominican Republic.<sup>277</sup> Tejada said that he gave vitamin B12 to three teammates during the 2005 season, Palmeiro and Players A and B. In his own interview with the congressional investigation, Player A said that he injected Tejada with vitamin B12 approximately 40-45 times during the 2004 season and approximately 30-35 times during the 2005 season until July, when he decided to stop doing so.<sup>278</sup>

Larry Bigbie, a former Orioles player who we interviewed in our investigation, confirmed that he observed Tejada injecting himself with vitamin B12 in the clubhouse restroom.<sup>279</sup> The report that four players on a major league team were self-administering an injectable substance should have been a cause of concern, even if the players said that the substance they were injecting into themselves was vitamin B12. Indeed, the presence of syringes in a major league clubhouse, by itself, should have been a cause of significant concern.

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<sup>276</sup> *Id.* at 19-20. During the arbitration challenging the positive steroid test, Palmeiro had testified about receiving the vitamin B12 but did not assert that he believed it was the reason for his positive drug test. *Id.* at 11.

<sup>277</sup> *Id.* at 25.

<sup>278</sup> *Id.* at 30. Player A gave the investigators a vial of the vitamin B12 that he had received from Tejada, which was tested and found not to contain any banned substances. *Id.* at 31.

<sup>279</sup> Bigbie also told us that he had conversations with Palmeiro while they were both playing with the Orioles in which Palmeiro asked him about his source of steroids and human growth hormone (the source was Kirk Radomski) and how the substances made him feel. Bigbie said that Palmeiro denied in those conversations that he had ever used performance enhancing substances himself.

During the summer of 2005, Tejada met with representatives from both the Players Association and the Commissioner's Office, who told him he should stop injecting himself with vitamin B12 and take the vitamin in pill form instead.<sup>280</sup>

J. 50-Game Suspension of Jason Grimsley for Reported Admissions of Human Growth Hormone Use, Summer 2006

On April 19, 2006, Arizona Diamondbacks pitcher Jason Grimsley received a package in the mail at his home in Scottsdale, Arizona that contained two "kits" of human growth hormone.<sup>281</sup> Federal agents monitored the delivery and were prepared to execute a search warrant for Grimsley's home, but according to a later affidavit, Grimsley chose to cooperate with the agents instead and submitted to a two-hour interview at another location. During the interview, Grimsley made admissions about his own use and purchases of steroids, human growth hormone, and clenbuterol. He also said that since drug testing had been implemented in Major League Baseball he had only used human growth hormone.<sup>282</sup>

Grimsley later decided to stop cooperating with federal investigators, who thereafter obtained a search warrant for his Arizona residence. On June 6, 2006, federal agents executed the search warrant. The next day, the Diamondbacks released him.<sup>283</sup> Numerous articles appeared over the following days about the statements Grimsley reportedly had made in his interview with federal agents, which were recounted in an affidavit that was submitted to a federal magistrate judge in order to obtain the later search warrant. In news reports the

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<sup>280</sup> Palmeiro Report at 27-28.

<sup>281</sup> See Redacted Affidavit of I.R.S. Special Agent Jeff Novitzky, sworn to on May 31, 2006, ¶ 2. A "kit" of human growth hormone contains seven vials of lypholized HGH powder and seven vials of sterile water. *Id.*, ¶ 12.

<sup>282</sup> *Id.*, ¶¶ 2, 16.

<sup>283</sup> See Jack Curry, *What a Player Will Do to Extend His Career*, N.Y. Times, June 8, 2006, at D5.

Diamondbacks' managing general partner was quoted stating that the Diamondbacks were planning to file papers with the Commissioner's Office to terminate Grimsley's contract because he was "unfit to play."<sup>284</sup>

The Commissioner asked Grimsley to appear for an interview "to deny and/or explain the statements that you gave to federal investigators."<sup>285</sup> Through the Players Association, he refused. On June 12, 2006, the Commissioner suspended Grimsley for 50 games without pay, to take effect if he ever returned to Major League Baseball. The suspension was based on Grimsley's reported admissions to federal agents of his possession, use, and intent to use human growth hormone, as detailed in the search warrant affidavit.<sup>286</sup>

At the time, the Major League Baseball joint drug program did not provide for discipline based on "non-analytic evidence" (that is, evidence of use that is not derived from sources other than a drug test) of the use of prohibited substances.<sup>287</sup> In suspending Grimsley, therefore, the Commissioner relied on his general authority under the Basic Agreement to impose discipline in the "best interests of baseball," which (subject to the requirement that discipline be based on "just cause") had been the basis for drug-related suspensions before the joint drug program was added to the Basic Agreement in 2002.

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<sup>284</sup> See Bob McManaman, *Kendrick Lashes Out at Grimsley*, Ariz. Republic, June 11, 2006, at C7.

<sup>285</sup> Letter from Allan H. Selig to Jason Grimsley, dated June 12, 2006.

<sup>286</sup> *Id.*; see also Jack Curry, *Grimsley Receives 50-Game Suspension*, N.Y. Times, June 13, 2006, at D1.

<sup>287</sup> See Major League Baseball's Joint Drug Prevention and Treatment Program (2006), § 8. Suspensions can be imposed under the express provisions of the program: for failed drug tests; for failure to comply with a prior treatment program; for a conviction or guilty plea involving the possession or use of a prohibited substance; or for participating in the sale or distribution of a prohibited substance.

The Players Association said it would file grievances challenging both the threatened termination of Grimsley's contract by the Diamondbacks and the Commissioner's 50-game suspension of him. Negotiations followed, and a settlement was reached between the Players Association and the Commissioner's Office, which also acted on behalf of the Diamondbacks. Under the settlement, the salary that Grimsley would have lost as the result of the 50-game suspension was retained by the Diamondbacks, which agreed to donate it to charity. Grimsley was paid the salary remaining due under the contract, and he also agreed to donate the funds to charity.<sup>288</sup>

In the settlement, the Players Association and the Commissioner's Office also agreed to two statements as binding precedent under the joint drug program: the Players Association agreed that the imposition of a 50-game suspension under the circumstances presented was permissible; and the Commissioner's Office agreed that a club's termination of a player contract under the circumstances would be a violation of the joint drug program.<sup>289</sup>

K. Procedures Followed for Players Implicated in Recent Government Investigations

As will be discussed in more detail below, during 2007 a number of current major league players have been identified in news reports for allegedly purchasing performance enhancing substances from compounding pharmacies that are the focus of state and federal criminal investigations, or from anti-aging clinics that work with those pharmacies. Beginning in September 2007, the Commissioner's Office has required several of the players who have been the subject of these reports to be interviewed about the allegations that have appeared in the press.

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<sup>288</sup> See Letter Agreement between Francis X. Coonelly and Michael S. Weiner Re: Jason Grimsley and the Arizona Diamondbacks and the Office of the Commissioner, dated Aug. 7, 2006.

<sup>289</sup> *Id.*

Neither I nor members of my investigative staff attended those interviews.

I asked to interview each of the players who was interviewed as a result of these news reports, but they either declined or did not respond to me.

L. Unreported Incidents

During this investigation we learned of a number of other instances in which club personnel came across potential evidence of a player's use of steroids or other performance enhancing substances but did not report that evidence as required by baseball's drug policy. Those unreported incidents included the following.

In 1999, Barry Waters, the director of team travel for the Houston Astros, received a telephone call from an employee of a hotel where the Astros had just stayed, reporting that a package had arrived at the hotel addressed to an alias that was used by Ken Caminiti, who then played for Houston. The hotel forwarded the package to Waters, who opened it and found glass vials containing a white liquid that he believed to be anabolic steroids and pills that he believed to be vitamins.

Waters did not deliver the vials to Caminiti, but believing incorrectly that there was no policy requiring him to report the incident, he did not report the matter to anyone else with the Astros or to the Commissioner's Office. Caminiti later admitted that he had used steroids during his playing career in a widely read Sports Illustrated article that was published in June 2002.<sup>290</sup>

During either the 1998 or 1999 season, a clubhouse employee with the San Diego Padres was walking through the players' clubhouse when he saw two players standing huddled over, and looking into, a small box. The Padres employee overheard one of the players say

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<sup>290</sup> See Tom Verducci, *Totally Juiced*, Sports Illustrated, June 3, 2002, at 34.

“Winstrol.” When the players noticed him watching them, they put the box away and walked away. The Padres employee did not report the incident.

In 1999 or 2000, Chuck Hawke, an attendant working in the visiting clubhouse in Kansas City, found syringes and vials that were hidden in an Oakley sunglasses bag when he was unpacking luggage for David Segui. Hawke brought the situation to the attention of his supervisor, but after discussing the incident they decided to replace the materials where he had found them and did not report the incident to anyone.

A second incident involving Segui also was not reported. It occurred when he was playing with the Baltimore Orioles in September 2004. In a conversation with Orioles co-general manager Jim Beattie, Segui said that he wanted to see a doctor who had given him human growth hormone and monitored his blood levels. Beattie said he had no knowledge of Segui’s alleged human growth hormone use prior to this conversation. Beattie’s co-general manager Mike Flanagan confirmed that Beattie informed him that Segui was “going to Florida to get human growth hormone.”

No one in the Orioles organization reported Segui’s admission of human growth hormone use to the Commissioner’s Office. Segui has since admitted that use publicly.

In 2000 or 2001, a visiting clubhouse manager working for the Minnesota Twins found a used syringe on top of a trash can in the visitors’ clubhouse. He brought the incident to the attention of the Twins manager, Tom Kelly, who told him to dispose of the syringe and to be careful doing so. Kelly confirmed the incident and said that he did not report the incident to anyone because he felt it “wasn’t any of [his] business” and that it was the other team’s issue to address.

In an article in 2006, a similar story was recounted by Paxton Crawford, a pitcher who was on the roster of the Boston Red Sox in 2000 and 2001. Crawford admitted to using steroids and human growth hormone while with the Red Sox. He described an incident in which syringes he had wrapped in a towel were spilled onto the floor of the Red Sox clubhouse, which he said caused laughter among his teammates.<sup>291</sup> Crawford declined our request for an interview, saying that he did not “do that stuff anymore,” that he was sorry he had used those substances in the past and that he just wanted to be left alone. In the course of this investigation, we interviewed 23 individuals who are, or had been, affiliated with the Red Sox organization including 6 persons who were with the Red Sox at the time of the reported events. While some said that they had suspicions about Crawford’s use of steroids when he was a player, no one could recall the incident that Crawford recounted in the article.

At the end of the 2004 season, a clubhouse employee was cleaning out the Detroit Tigers locker room when he found a black toiletry kit that was locked. He and another Tigers employee opened the bag and found unused syringes and vials that they determined were anabolic steroids. They did not report the incident. The employee said that he could not remember who the bag belonged to.

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<sup>291</sup> Paxton Crawford, “*It’s Like Playing with Fire*,” ESPN The Magazine, June 20, 2006; Associated Press, *Crawford Comes Clean*, SI.com, June 22, 2006.

## VII. Major League Baseball and the BALCO Investigation

### A. The BALCO Raid and Grand Jury Investigation

On September 3, 2003, law enforcement officers from several federal agencies raided the offices of the Bay Area Laboratory Cooperative in Burlingame, California.<sup>292</sup> The raid was part of an investigation that had been underway since August 2002 into allegations that a number of “‘world-class’ professional athletes were . . . illegally receiving anabolic steroids and other athletic performance-enhancing drugs and having their steroid intake monitored by persons associated with [BALCO].”<sup>293</sup>

On the day of the raid, Victor Conte, the founder and president of BALCO, agreed to be interviewed by federal agents who were conducting the investigation.<sup>294</sup> He told them that BALCO was in the business of providing the “elemental analysis of blood and urine samples.”<sup>295</sup> Conte also admitted, however, that BALCO distributed to “elite athletes” substances that he called “the cream” and “the clear” but that were, in fact, “athletic performance enhancing substances.”<sup>296</sup> Conte described “the clear” as a “liquid with anabolic effects” that “helps the athlete with recovery.”<sup>297</sup> He said he purchased a supply of “the clear” from a chemist named Patrick Arnold for \$450 and that supply had lasted him ever since.<sup>298</sup>

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<sup>292</sup> See Lonnie White, *Raid Is Conducted on Supplement Company; BALCO a Northern California firm, has a reputation of catering to high-profile athletes*, L.A. Times, Sept. 5, 2003, at D3.

<sup>293</sup> Affidavit of Special Agent Brian Watson in Support of Request for Search Warrants, sworn to on Sept. 3, 2003, at 2.

<sup>294</sup> See generally Internal Revenue Service Memorandum of Interview of Victor Conte, Jr., dated Sept. 3, 2003.

<sup>295</sup> *Id.*, ¶ 2.

<sup>296</sup> *Id.*, ¶¶ 7, 12.

<sup>297</sup> *Id.*, ¶ 7. Federal prosecutors later described “the clear” as “a steroid-like derivative also now known as tetrahydrogestrinone, or THG.” United States Sentencing Memorandum,



“The cream,” which athletes rubbed on their skin, was a combination of testosterone and epitestosterone that Conte said he obtained from other sources. The combination allowed athletes to take the substance without raising their “T/E ratio,” the ratio in the bloodstream of testosterone and epitestosterone, thereby enabling the athletes to pass a drug test. According to the Internal Revenue Service memorandum of his interview that day, “Conte stated that he gives ‘the clear’ and ‘the cream’ to athletes so they can increase athletic performance without getting caught by the testers.”<sup>299</sup>

Conte told the agents that he had sold “the cream” and “the clear,” and advised on their use, to dozens of elite athletes, including several players in Major League Baseball whom he named in the interview: Barry Bonds; Jason Giambi; Jeremy Giambi; Armando Rios; and Gary Sheffield.<sup>300</sup> In that regard, Conte explained:

At the beginning of this major league baseball season, Greg Anderson, a personal trainer at Bay Area Fitness who works closely with several major league baseball players, brought in several of the players to Balco in order to obtain the undetectable cream and clear. This was done because of Major League Baseball’s new drug testing policy. Barry Bonds was one of the players that Anderson brought to Conte to obtain “the clear” and “the cream”. Bonds takes “the clear” and “the cream” on a regular basis. The protocol for using the substances is two times per week for “the clear” and two times per week for “the cream”. The athletes do this for three weeks then take one week off. [BALCO vice president] Jim Valente deals more with Anderson than Conte does. Anderson last got some of “the clear” and “the cream” from Conte for his athletes about three (3) or (4) weeks ago.<sup>301</sup>

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dated Oct. 11, 2005, *United States of America v. Anderson*, CR No. 04-0044 (N.D. Cal.) (“Anderson Sentencing Memo.”), at 3.

<sup>298</sup> Internal Revenue Service Memorandum of Interview of Victor Conte Jr., dated Sept. 3, 2003, ¶ 7 (Exhibit M(1) to Declaration of Special Agent Jeff Novitzky dated Oct. 29, 2004, *United States v. Conte*, CR No. 04-0044-SI (N.D. Cal.)).

<sup>299</sup> *Id.*

<sup>300</sup> *Id.*, ¶ 8.

<sup>301</sup> *Id.*, ¶ 11.

Conte told the agents that “Barry Bonds does not pay Conte for ‘the clear’ and ‘the cream’ that he receives. Bonds’ payment is in the form of promotion for Conte’s ZMA product.”<sup>302</sup>

Valente also agreed to be interviewed by federal agents on the day of the BALCO raid. During that interview, according to the Internal Revenue Service interview memorandum, Valente stated:

[He] is aware that Greg Anderson also provides human growth hormone and testosterone cypionate to his professional baseball clients. Anderson told him this. Anderson brought his baseball clients to Balco this spring when major league baseball announced their new steroid testing policy. This was so Anderson could start giving them steroids that would not show up in drug tests.

Among those baseball players brought to Balco by Anderson was Barry Bonds. Bonds has received “the clear” and “the cream” from Balco on a “couple of occasions”. According to Valente, Bonds does not like how “the clear” makes him feel.

Other players that Anderson has obtained “the clear” and “the cream” for from Balco are Benito Santiago, Gary Sheffield, Marvin Benard, Jason Giambi and Randy Velarde. Sometime [sic] the substances are given to Anderson to give to the athletes and sometimes the athletes are given the substances directly. . . .

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. . . One instance that Valente recalls where athletes did test positive for steroids involved Jason and Jeremy Giambi. The Giambi brothers came to Balco and informed them that they had taken a steroid some time ago and wanted to see if it was still detectable in their systems. Valente recalled that the particular steroid they took can stay in a person’s system for up to 18 months. The urine that Balco collected and sent out for testing came back positive for steroids.

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Valente recalls sending a blood sample belonging to Barry Bonds to Lab One, then notifying Lab One that the sample did not refer to Bonds but rather to Greg Anderson. Valente stated that Anderson asked him to do this because Bonds did not want his name on the blood sample. Despite

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<sup>302</sup> *Id.*, ¶ 22. ZMA is a nutritional supplement that is marketed by Conte’s other company, SNAC System, Inc.

signing an affidavit stating that the blood sample was mislabeled as Barry Bonds, Valente knew that it was Bonds' blood.<sup>303</sup>

Both Conte and Valente later denied that they had made the statements attributed to them in the Internal Revenue Service interview memoranda.<sup>304</sup>

After completing their search of the BALCO offices, agents also searched a storage locker where Conte kept a supply of performance enhancing substances. There the federal agents found six 100-gram jars of the "cream" and a quantity of injectable anabolic steroids.<sup>305</sup>

Having obtained a search warrant for Greg Anderson's residence and vehicle, the agents then confronted Anderson at Bay Area Fitness and informed him of the warrant.<sup>306</sup> Anderson accompanied the agents to his condominium, where the agents executed the search warrant.<sup>307</sup> Anderson initially agreed to speak with the investigators before later concluding that he should no longer cooperate.<sup>308</sup> According to the memorandum of his interview by federal investigators, Anderson said that he began working with players in Major League Baseball around 1997, that Barry Bonds was his first "athlete client," and that he also worked as a trainer

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<sup>303</sup> Internal Revenue Service Memorandum of Interview of Jim Valente, dated Sept. 3, 2003, ¶¶ 4-6, 10, 13. (Exhibit M(2) to Declaration of Special Agent Jeff Novitzky dated Oct. 29, 2004, *United States v. Conte*, CR No. 04-0044-SI (N.D. Cal.))

<sup>304</sup> See Reporter's Transcript of Proceedings in *United States v. Victor Conte, Jr., et. al.*, CR 04-00044, dated Dec. 1, 2004, at 3, 4, 8, 18, 28.

<sup>305</sup> Anderson Sentencing Memo. at 4.

<sup>306</sup> Internal Revenue Service Memorandum of Interview of Greg Anderson, dated Sept. 3, 2003, at 1. (Exhibit 1 to Declaration of Special Agent Ed Barberini dated Oct. 28, 2004, *United States v. Anderson*, CR No. 04-0044-SI (N.D. Cal.)).

<sup>307</sup> *Id.*

<sup>308</sup> *Id.* at 1, 3.

with Marvin Benard, Bobby Estalella, Jason Giambi, Armando Rios, Benito Santiago, and Gary Sheffield.<sup>309</sup>

Although initially he preferred “not to say who” received steroids from him, Anderson eventually admitted that he had supplied performance enhancing substances to Benard, Estalella, Rios, and Santiago.<sup>310</sup> Anderson also stated that “Barry Bonds never took any of ‘the clear’ or ‘the cream’ from Balco.”<sup>311</sup> Anderson said that he provided Santiago with human growth hormone a few months before the interview and had sent that substance by FedEx “in the past” to both Estalella and Rios.<sup>312</sup> During their search of Anderson’s home, agents found documentary evidence “corroborating these admissions.”<sup>313</sup>

Anderson also told investigators that “[w]hen baseball began its steroid testing procedures this year, some of Anderson’s baseball clients began taking ‘the clear’ and ‘the cream’ products that Anderson gets from Balco Laboratories. . . . Valente told Anderson that the cream was a combination of testosterone and epitestosterone and that this is why is [sic] was safe for athletes being tested to use.”<sup>314</sup>

During Anderson’s interview, agents discovered “file folders labeled with names of professional baseball players” containing “calendars with athletes [sic] names or initials on

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<sup>309</sup> *Id.*, ¶ 4.

<sup>310</sup> *Id.*, ¶¶ 5, 9.

<sup>311</sup> Internal Revenue Service Memorandum of Interview of Greg Anderson, dated Sept. 3, 2003, ¶ 17.

<sup>312</sup> *Id.*, ¶¶ 10, 11. Anderson said that he obtained the human growth hormone from AIDS patients in San Francisco. *Id.*, ¶ 14. Kirk Radomski also obtained human growth hormone that he resold to major league players by purchasing “kits” of the substance from AIDS patients.

<sup>313</sup> Anderson Sentencing Memo. at 5.

<sup>314</sup> Internal Revenue Service Memorandum of Interview of Greg Anderson, dated Sept. 3, 2003, ¶ 7.

them which appeared to contain details of steroid administration to athletes by dates.”<sup>315</sup> Federal prosecutors later explained that the calendars “contained codes reflecting individual athlete use of the ‘[c]ream,’ the ‘[c]lear,’ human growth hormone, and injectable anabolic steroids.”<sup>316</sup>

Agents also found “\$63,920 in currency,” quantities of both the “cream” and the “clear,” “empty boxes of human growth hormone, a quantity of injectable anabolic steroids, syringes, and other paraphernalia associated with steroid distribution.”<sup>317</sup> After the agents found this evidence, Anderson said that “he didn’t think he should be talking anymore because he didn’t want to go to jail,” and the interview ended.<sup>318</sup>

A grand jury investigation continued into BALCO’s role in the alleged illegal distribution of performance enhancing substances.<sup>319</sup> It was directed by prosecutors from the United States Attorney’s Office for the Northern District of California. Witnesses who were subpoenaed to appear before the grand jury included Marvin Benard, Barry Bonds, Bobby Estalella, Jason Giambi, Jeremy Giambi, Armando Rios, Benito Santiago, Gary Sheffield, and Randy Velarde.<sup>320</sup>

Under federal law, with few exceptions, the testimony of witnesses before a grand jury is considered confidential and cannot be disclosed. In a series of articles in early December

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<sup>315</sup> *Id.* at 3.

<sup>316</sup> Anderson Sentencing Memo. at 4-5.

<sup>317</sup> *Id.* at 4.

<sup>318</sup> Internal Revenue Service Memorandum of Interview of Greg Anderson, dated Sept. 3, 2003, at 3.

<sup>319</sup> Mark Fainaru-Wada, *Grand Jury Probes Nutrient Company*, S.F. Chron., Oct. 14, 2003, at A1.

<sup>320</sup> See Lance Williams and Mark Fainaru-Wada, *What Bonds told BALCO grand jury*, S.F. Chron., Dec. 3, 2004, at A1; see also Mark Fainaru-Wada and Lance Williams, *Giambi admitted taking steroids*, S.F. Chron., Dec. 2, 2004, at A1; Murray Chass, *Scope of Balco Subpoena of Steroid Tests Is Greatly Reduced*, N.Y. Times, Mar. 6, 2004, at D1.

2004, however, the San Francisco Chronicle published reports of the alleged testimony of many of these Major League Baseball players, whose transcribed testimony two Chronicle reporters, Mark Fainaru-Wada and Lance Williams, claimed to have reviewed.<sup>321</sup>

The Chronicle reported that, in his grand jury testimony, Bonds admitted that during the 2003 season he had received substances sounding like the “clear” and the “cream” from his personal strength trainer, Greg Anderson, and that he had used those substances. He reportedly testified, however, that he was told “they were the nutritional supplement flaxseed oil and a rubbing balm for arthritis.” The article reported that Bonds was asked during his testimony if he had used anabolic steroids, human growth hormone, insulin, or Clomid (a female infertility drug used by steroid abusers to counteract the effects of steroids on natural testosterone production) over a three-year period from 2001 through 2003, and he denied that he had done so.<sup>322</sup> On November 15, 2007, Bonds was indicted for perjury and obstruction of justice based on his grand jury testimony.<sup>323</sup>

The Chronicle also reported on the grand jury testimony of Jason Giambi. According to the news story, Giambi testified that he had used several different performance enhancing substances, some of which he had obtained from Greg Anderson. Giambi reportedly told the grand jury that he injected himself with human growth hormone in his abdomen and injected himself in the rear end with anabolic steroids. “Giambi also said he had taken ‘undetectable’ steroids known as ‘the clear’ and ‘the cream’ . . . .” Giambi was reported to have

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<sup>321</sup> See Lance Williams and Mark Fainaru-Wada, *What Bonds told BALCO grand jury*, S.F. Chron., Dec. 3, 2004, at A1; see also Mark Fainaru-Wada and Lance Williams, *Giambi admitted taking steroids*, S.F. Chron., Dec. 2, 2004, at A1.

<sup>322</sup> See Lance Williams and Mark Fainaru-Wada, *What Bonds told BALCO grand jury*, S.F. Chron., Dec. 3, 2004, at A1.

<sup>323</sup> See Indictment, *United States v. Bonds*, No. 07 CR 0732 (N.D. Cal.).

testified that he obtained all of the substances except the human growth hormone from Greg Anderson; he obtained the growth hormone from a Las Vegas gym.<sup>324</sup>

Before he began working with Greg Anderson, Giambi reportedly had self-administered the anabolic steroid Deca-Durabolin, which he had obtained from a source at Gold's Gym in Las Vegas. Giambi submitted to blood and urine tests at Anderson's direction, which revealed his use of Deca-Durabolin and, he reportedly testified to the grand jury, Anderson "warned him to stop using it, saying [that type of anabolic steroid] could stay in his system a long time."<sup>325</sup>

Giambi also reportedly told the grand jury that Anderson described "the cream" and "the clear" as "an alternative to steroids" that did not appear on a test for steroids. Giambi also acknowledged that a calendar kept by Anderson for his training program set forth the regimen of substances he was taking under Anderson's supervision, including the "cream," the "clear," injectable testosterone, and a number of different pills.<sup>326</sup>

The Chronicle reported that Giambi's brother, Jeremy, who also had played for the Oakland Athletics, provided testimony that "mirrored his brother's – right down to Anderson's notifying him that he had tested positive for the steroid Deca Durabolin." Jeremy Giambi reportedly testified that he had self-administered human growth hormone and testosterone he received from Greg Anderson "before the start of the 2003 season, when he played for the Boston Red Sox." Anderson had told him that "the clear" and "the cream" were

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<sup>324</sup> Mark Fainaru-Wada and Lance Williams, *Giambi admitted taking steroids*, S.F. Chron., Dec. 2, 2004, at A1.

<sup>325</sup> *Id.*

<sup>326</sup> *Id.*

“undetectable ‘alternatives to steroids.’” Both Giambis testified “they were drawn to [Greg Anderson] because of Bonds’ success.”<sup>327</sup>

In addition to the testimony of Bonds and the Giambis, the Chronicle reported that former San Francisco Giants players Bobby Estalella, Armando Rios, and Benito Santiago all had admitted to using performance enhancing substances in their grand jury testimony, although Santiago’s attorney said that if Santiago had ingested any performance enhancing substances it had been without knowledge of what they were.<sup>328</sup>

The Chronicle also reported that New York Yankees outfielder Gary Sheffield testified that when he was training with Barry Bonds before the 2002 season, Bonds “had arranged for him to receive ‘the cream,’ ‘the clear’ and ‘red beans,’ which the prosecutors identified as steroid pills manufactured in Mexico.” Sheffield was reported to have testified that he did not interact directly with Anderson and that he was never told that the substances he was given by Bonds were steroids.<sup>329</sup>

In February 2007, Troy Ellerman, formerly counsel to Jim Valente, was charged by federal prosecutors with, among other things, permitting Fainaru-Wada “to take verbatim notes of grand jury testimony of baseball players Jason Giambi, Barry Bonds and Gary Sheffield.”<sup>330</sup> Ellerman pled guilty and in July 2007 was sentenced to 30 months imprisonment for contempt of court and obstruction of justice.<sup>331</sup>

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<sup>327</sup> *Id.*

<sup>328</sup> Lance Williams and Mark Fainaru-Wada, *What Bonds told BALCO grand jury*, S.F. Chron., Dec. 3, 2004, at A1.

<sup>329</sup> *Id.*

<sup>330</sup> Criminal Information, *United States v. Troy L. Ellerman*, No. CR 07-0080 (N.D. Cal.), Feb. 14, 2007, at 4.

<sup>331</sup> *See* Judgment, *United States v. Troy L. Ellerman*, No. CR 07-0080 (N.D. Cal.), July 13, 2007.



B. Information Learned During this Investigation  
Concerning BALCO and Major League Baseball

I requested interviews of all the major league players who had been publicly implicated in the BALCO case: Marvin Benard; Barry Bonds; Bobby Estalella; Jason Giambi; Jeremy Giambi; Armando Rios; Benito Santiago; Gary Sheffield; and Randy Velarde. Jason Giambi agreed to be interviewed, and Randy Velarde provided information through his attorney. All the other players implicated in the BALCO case refused my requests to be interviewed or did not respond to them. Gary Sheffield initially declined my request for an interview. Sheffield later said that he would agree to an interview, subject to the availability of his lawyer who was undergoing medical treatments. Because of her medical condition, we were unable to secure a date for an interview of Sheffield before the end of this investigation.

Those players who provided a reason for their refusal to cooperate most frequently cited the possibility of a criminal investigation. Of all the players, only Barry Bonds was at the time the subject of a criminal investigation, which has now led to a grand jury indictment against him for perjury and obstruction of justice, so under these circumstances his refusal to talk with me was understandable.

Interviews also were requested of numerous other persons believed to have knowledge of BALCO, including Greg Anderson, Patrick Arnold, Kimberly Bell, Victor Conte, Mark Fainaru-Wada, Steve Hoskins, Remi Korchemny, Jim Valente, and Lance Williams. All declined to be interviewed. Nevertheless, we were able to secure a number of relevant documents and interviews. Set forth below is the information we obtained from those sources.

1. Information About Possible Steroid Sales By  
Greg Anderson Before the Raid on BALCO

In 2000, Stan Conte became the head athletic trainer for the San Francisco Giants, having served in more junior positions within the organization before then. (Conte is not related

to BALCO founder Victor Conte.) According to Conte, he first met Greg Anderson and Harvey Shields during the Giants' spring training that year. Anderson advised Conte that he was a "strength weightlifting guru" whom Bonds had sought out for assistance. Bonds, in turn, told Conte that Anderson's presence was not a reflection on Conte, but that Bonds needed special attention as he got older. Shields also provided personal training services for Bonds.

Conte asked Anderson for a resume during spring training. In response, Anderson supplied a one-page document indicating that Anderson had graduated from high school and that everything else was "pending." The resume did not reveal, and Conte was unaware of, any education or expertise that Anderson might have that would qualify him to train a professional athlete.

Conte observed Anderson training in the weight room with Bonds on numerous occasions during 2000 spring training. Conte was concerned that the workouts involved heavier weights than Conte would have recommended, which, in Conte's view, created a heightened risk of injury. When Conte asked Anderson about Bonds's weight training program, Anderson responded that "I'm doing what Barry tells me to."

During spring training, Conte met with Giants general manager Brian Sabean to express his concerns about the presence of Anderson and Shields in the clubhouse, weight room, and other restricted areas. Conte felt strongly that personal trainers should not have such access, particularly where, as here, he viewed the trainers to be unqualified.

Sabean told Conte that if Conte objected to Anderson and Shields being in the clubhouse, Conte should order them out himself. Conte said he would do this if Sabean would support him when Bonds complained, which Conte believed would be the result of his actions. Sabean did not respond to this request for support, leading Conte to believe that Sabean would

not do so if Bonds protested. Conte therefore decided to take no action to deny Anderson or Shields access to restricted areas.<sup>332</sup>

During winter meetings in 2001, Kevin Hallinan, the director of security for the Commissioner's Office, lectured team physicians and athletic trainers about the importance of clubhouse security generally. Conte said that after Hallinan's prepared remarks, San Francisco's assistant athletic trainer Barney Nugent stood up and said that there were issues with clubhouse security in San Francisco that seemed beyond the capability of local security to control. After the lecture, Nugent and Conte told Hallinan about security issues related to Bonds's entourage. According to Conte, Hallinan seemed to be familiar with the issue and promised that "we're going to do something about this, it's an issue and we know what you're talking about."<sup>333</sup>

In January 2002, Peter Magowan, the Giants' president and managing general partner, met with Bonds in connection with the renewal of his contract with the Giants. In a subsequent letter to Bonds, Magowan set forth a series of "discussion points" that they agreed to during that meeting and that Magowan assured Bonds would "remain consistent" during the duration of Bonds's new contract (covering the 2002-2006 seasons). Along with a number of other accommodations to Bonds, the Giants agreed that:

Barry will provide the Club with a list of the personnel typically and historically needed. We will also work closely with Barry's publicists to assure them of the proper access. In return, we agree that any of the approved personnel are not allowed to bring along any friends or associates or family members and the personnel's access should be limited to their area of responsibility to Barry.<sup>334</sup>

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<sup>332</sup> Sabeian did not recall such a conversation with Conte in 2000 about either Shields or Anderson.

<sup>333</sup> Giants assistant athletic trainer Dave Groeschner confirmed Conte's recollection of events. Hallinan did not remember Nugent's statement at the meeting or the conversation with Conte, Groeschner, and Nugent after his lecture.

<sup>334</sup> Letter from Peter A. Magowan to Barry Bonds, dated Feb. 11, 2002.

In August 2002, the Giants were visiting Atlanta for a series with the Braves. At the time, Anderson was traveling with the Giants. Conte recalls that during this series a Giants player asked Conte about anabolic steroids. Conte refused to identify the player to us, citing athletic trainer privilege. According to Conte, the player told him that he was considering obtaining steroids from Greg Anderson and wanted to know the health issues associated with the use of steroids. In response, Conte explained at some length the health hazards of steroid use and lectured the player about the unfairness to other players posed by the illicit use of steroids. Conte believed that it was “a good lecture” and that he put considerable doubt in the player’s mind.

Conte stated that he reported the incident to general manager Brian Sabean within an hour of its occurrence. He told Sabean he was concerned that Anderson might be distributing steroids to Giants players. While he refused to identify the player who had approached him, Conte otherwise described the conversation to Sabean in detail. Sabean suggested Conte confront Anderson and Bonds about the matter, which Conte refused to do. In Conte’s view, it was not the responsibility of the athletic trainer to address such an issue.

Sabean confirmed in his interview that Conte’s recollection of their conversation was accurate. He also acknowledged that he did not raise the issue with Bonds or Anderson. Instead, he asked Conte if he knew anyone who could “check out” Anderson. Conte said that he knew a Drug Enforcement Administration agent, and Sabean suggested Conte call the agent to check into Anderson. The DEA agent later told Conte that he did not find any information about Anderson. Conte relayed this to Sabean.

Sabean told me that he believed that if Anderson was in fact selling drugs illegally the government would have known about it. So when he received the report from Conte, Sabean

did not report the issue to anyone in the Giants organization or the Commissioner's Office, he did not confront Bonds or Anderson, and he did not take any steps to prohibit Anderson from gaining access to Giants facilities. Sabean said that he was not aware at the time of the Major League Baseball policy that required him to report information regarding a player's drug use to the Commissioner's Office.

Sabean explained that he was in a very difficult situation regarding disclosure of this information because, as a result of the clubhouse culture in baseball, he felt he could not risk "outing" Conte as the source of the information. He said that if he had insisted on Anderson's ouster from the clubhouse, Bonds would have vigorously objected, just as he did when the Giants tried to bar Harvey Shields in response to the later (February 2004) mandate from the Commissioner's Office barring personal trainers from restricted areas.

During spring training in 2003, Hallinan and one of his deputies asked Conte to join them in the dugout for a private meeting. Hallinan asked Conte if there was anything the security department could do to help him. Conte responded to the effect that "the horse had already left the barn and there's no need to close the door now." He did not report to Hallinan the conversations he had had with Sabean about Anderson the previous season, because, he said, the incident did not cross his mind at that time.

In September 2003, published reports revealed that a search warrant was executed on Anderson's residence in connection with the BALCO investigation and that Anderson was under investigation for the alleged distribution of anabolic steroids.<sup>335</sup> Even after he became

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<sup>335</sup> See Mark Fainaru-Wada, *IRS searches home of Bonds' personal trainer*, S.F. Chron., Sept. 9, 2003, at A15; see also Mark Fainaru-Wada and Lance Williams, *Sports and Drugs; How the doping scandal unfolded; Fallout from BALCO probe could taint Olympics, pro sports*, S.F. Chron., Dec. 21, 2003, at B1.

aware of this event, Sabean did not inform anyone in the Commissioner's Office or within the Giants organization of his earlier conversation with Conte about Anderson.

Peter Magowan, the Giants' managing partner and chief executive officer, recalled asking Sabean directly whether the Giants "had a problem" after reading the news reports of the BALCO raids. Magowan said that what he meant by his inquiry was to ask whether the Giants had a problem with Anderson dispensing steroids; he wanted to know whether Sabean had any reason to know of such a problem. According to Magowan, Sabean responded that he was not aware of any problem the Giants might have. However, Sabean strongly denied that such a conversation occurred.

Magowan said that in September 2003, following the publicity surrounding the execution of the BALCO search warrants, Anderson was barred from the Giants clubhouse. According to Giants clubhouse records, by that time Anderson had visited the clubhouse on 94 different days since March 2002. On February 12, 2004, Anderson and others were indicted by a federal grand jury in San Francisco on charges that included conspiracy to distribute anabolic steroids.<sup>336</sup>

In a February 20, 2004 memorandum to all major league clubs, Commissioner Selig and Sandy Alderson, then his executive vice president for baseball operations, reiterated the importance of clubhouse security in light of "[r]ecent events." The memorandum imposed regulations that restricted who would be granted access to clubhouses, dugouts, and other areas of ballparks in Major League Baseball. Under the policy, access to restricted areas was limited to authorized club personnel, immediate family, and authorized representatives of Major League Baseball or the Players Association. In addition, accredited media were granted limited access to

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<sup>336</sup> Jack Curry, *4 Indicted in a Steroid Scheme That Involved Top Pro Athletes*, N.Y. Times, Feb. 13, 2004, at A1.

portions of the clubhouse during specified periods before and after games. The policy expressly prohibited access to restricted areas by “friends, associates, agents, attorneys [and] personal trainers.”<sup>337</sup>

In April 2005, published news reports indicated that Bonds was still training with Anderson outside of Giants facilities.<sup>338</sup> Magowan said that after learning this the Giants contacted the Commissioner’s Office, which advised that the Giants could not control Bonds’s choice of persons he trained with while away from the club’s facilities.

Nevertheless, according to Magowan, the Giants asked Bonds to stop working with Anderson. The Giants also instructed Harvey Shields and Greg Oliver, who were then both members of the Giants training staff and worked with Bonds extensively, to have no contact with Anderson. On July 16, 2005, Anderson pleaded guilty to one count of conspiracy to distribute anabolic steroids and one count of money laundering.<sup>339</sup>

2. Players’ Links to Performance Enhancing Substances

a. Marvin Benard

Dusty Baker was the manager of the San Francisco Giants in 2003 when the news of the BALCO raids broke. Baker advised my investigators in an interview that he was close to Marvin Benard and was “completely shocked” when he became aware of the allegations that Benard used steroids.

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<sup>337</sup> See Memorandum to Major League Clubs from Commissioner Selig and Sandy Alderson dated February 20, 2004 regarding Clubhouse Security.

<sup>338</sup> Mark Fainaru-Wada and Lance Williams, *Bonds working with Anderson*, S.F. Chron., Apr. 9, 2005, at D1.

<sup>339</sup> See Plea Agreement, *United States v. Greg Anderson*, CR 04-0044-SI (N.D. Cal.), at 1.

After Baker learned of the allegations, he asked Benard if they were true. According to Baker, Benard admitted he had used steroids previously but said that he had stopped. Baker did not report Benard's admission to anyone in Giants management or the Commissioner's Office.

b. Barry Bonds

In addition to declining an interview in connection with this investigation, Bonds declined to respond to written questions about his alleged use of performance enhancing substances.

Harvey Shields was Bonds's personal trainer between 2000 and 2004 and continued to provide training services to Bonds as a Giants employee from 2004 through 2006. He said in an interview that Greg Anderson provided Bonds with a cream to use on his elbow, which Shields said he believed was an over-the-counter "arthritis cream." Shields also said that Anderson provided Bonds with a clear liquid that Bonds ingested by placing drops under his tongue. Shields did not know where Anderson obtained the clear liquid. When asked how many times he and Bonds had taken the "clear," Shields would say only "more than once."<sup>340</sup>

Shields said he believed the clear liquid was flaxseed oil. He claimed to have taken the clear liquid himself, and he said that it tasted like flaxseed oil he had obtained from health food stores in the past. Shields's description of the "clear" is contradicted by the description provided by Patrick Arnold, the chemist who developed it, who in a television

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<sup>340</sup> In his first interview with my investigators, Shields claimed to have entered into a Confidentiality Agreement with Bonds in 2006 that he believed precluded him from disclosing certain information to our investigation.



interview said the substance was “sickly bitter” and would never be confused for flaxseed oil by anyone who had tasted both.<sup>341</sup>

In their book *The Juice: The Real Story of Baseball’s Drug Problems*, the authors Will Carroll and Dr. William Carroll explained that “BALCO was noted to use flaxseed oil as a delivery agent” for the “clear.” According to the authors, the use of flaxseed oil as a delivery agent for steroids is widely known in the “steroid underground” because “flaxseed oil can counteract some of the estrogenic effects of steroid use, such as growth of breasts in men.”<sup>342</sup>

Shields also accompanied Bonds to BALCO on at least one occasion sometime “around 2001,” when Bonds and Shields met at BALCO with Bonds’s personal physician, Dr. Arthur Ting, and BALCO vice president Jim Valente. Once inside, Dr. Ting drew blood from Bonds and Shields for testing at BALCO. Shields said that BALCO tested the blood samples for vitamin and mineral deficiencies.

Major League Baseball records confirmed that Greg Anderson accompanied Bonds as his guest during a 2002 All-Star tour in Japan. Because Anderson was Bonds’s guest, his first-class airfare, hotel, and a daily meal stipend were paid for by Major League Baseball during the two-week trip.

Peter Magowan told me in an interview that he was in San Diego in February 2004 when he received a telephone call from Bonds to discuss ways to improve the team for the coming season. Magowan said that at the conclusion of the phone call he said to Bonds “I’ve really got to know, did you take steroids?” According to Magowan, Bonds responded that when he took the substances he did not know they were steroids but he later learned they were. Bonds

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<sup>341</sup> *Costas Now*, HBO television broadcast, original air date July 24, 2007.

<sup>342</sup> Will Carroll & William Carroll, Ed.D., *The Juice: The Real Story of Baseball’s Drug Problems* 13 (Ivan R. Dee 2005).

said that he took these substances for a period of time to help with his arthritis, as well as sleeping problems he attributed to concern about his father's failing health. To emphasize that he was not hiding anything Bonds added that he used these substances in the clubhouse in the plain view of others. Bonds told Magowan he used these substances for only a short period of time and that they "didn't work." Magowan recalled asking Bonds whether this was what he had told the grand jury. Bonds replied yes. Magowan also asked Bonds if he was telling the truth, and Bonds said he was.

Two days after Magowan's interview, lawyers for Magowan and the Giants called a member of my investigative staff. Magowan's lawyer explained that his client misspoke when he said that Bonds had said, during their February 2004 telephone call, that he later learned the substances he had taken were steroids. According to his lawyer, Magowan could only recall with certainty that (1) Bonds had said he did not knowingly take steroids, and (2) what Bonds said to Magowan during the call was consistent with what Magowan later read in the San Francisco Chronicle about Bonds's reported grand jury testimony.

c. Bobby Estalella

In *Game of Shadows*, the authors wrote that in 2002 Bobby Estalella, a former player with the San Francisco Giants who was then with the Colorado Rockies, called Greg Anderson seeking help to recover from shoulder surgery. Estalella had met Anderson when he was playing with the Giants and had agreed to blood and urine tests for mineral deficiencies. Anderson reportedly sent Estalella a "workout program and drug schedule" under which Estalella would use human growth hormone, the "clear," the "cream," and the female fertility drug Clomid, in rotation.<sup>343</sup>

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<sup>343</sup> Mark Fainaru-Wada & Lance Williams, *Game of Shadows* 142-43 (Gotham Books 2006).

Estalella's apparent use of performance enhancing substances was noticed by club officials. After the 2003 season, the Los Angeles Dodgers considered signing Estalella as a free agent. During a three-day meeting of Dodgers officials in late October 2003, assessments were made of many players, including the possible use of steroids by some players. Ellen Harrigan, an administrator in the Dodgers' scouting department, kept detailed notes of the discussion. Among the comments she recorded was an observation by one of the participants that Estalella was a "poster boy for the chemicals."<sup>344</sup>

d. Jason Giambi

Jason Giambi was interviewed subject to an agreement that had been negotiated among his agent, the Commissioner's Office, and the Players Association under which Giambi was not to be asked to identify any other player as to whom he had knowledge of the illegal use of performance enhancing substances.<sup>345</sup>

Giambi told me that he began using anabolic steroids in 2001, when he purchased Deca-Durabolin from a contact named "Jim" who he met at Gold's Gym in Las Vegas but could not further identify. Giambi said that he injected himself with approximately "one cc" (cubic centimeter) of Deca-Durabolin each week for the remainder of the 2001 season, always administering the drug to himself and always at home. He purchased an additional supply of

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<sup>344</sup> Transcript of Dodgers Baseball Operations Department Meetings, dated Oct. 21-24, 2003, at 51. Several Dodgers officials participated in the meetings, including special scouting advisor Gib Bodet, senior advisor John Boles, general manager Dan Evans, team physician Frank Jobe, athletic trainer Stan Johnston, manager Jim Tracy, advance scout Mark Weidemaier, senior scouting advisor Don Welke, and director of amateur scouting Logan White.

<sup>345</sup> Letter from Francis X. Coonelly to Michael S. Weiner, dated June 21, 2007.

Deca-Durabolin from the same source before the 2002 season, and he followed the same weekly regimen of use of that substance throughout the 2002 season.<sup>346</sup>

Giambi told me he first met Greg Anderson in November 2002 while on an All-Star tour of Japan on which Anderson was accompanying Barry Bonds. Anderson told Giambi that “he was connected to BALCO” and that it specialized in correcting mineral deficiencies in athletes. Anderson suggested Giambi should “come and get his blood and urine tested” when they returned to the United States. Giambi did not discuss steroids with Anderson in Japan, nor did Giambi receive any drugs or other substances from Anderson while they were in Japan.

In late November or early December 2002, after Giambi had returned to the Bay Area, Anderson arranged for him to have a blood test at a hospital near BALCO’s offices. Giambi later met Anderson at a gym in Burlingame, where they reviewed the results of the test. Anderson told Giambi that he had tested positive for Deca-Durabolin and warned him to stop using it because it would stay in his system for a long time and was easily detectable in a urine test. They then discussed starting Giambi on Anderson’s program of performance enhancing substances. Anderson explained how he would prepare a calendar for Giambi that would tell him what substances to take, and when, and promised that if Giambi followed the program he would not test positive in baseball’s drug testing program, which was to begin in 2003.

Shortly thereafter, Anderson mailed a package to Giambi that included a calendar, injectable testosterone, the “cream,” the “clear,” and orange, white, and yellow pills. Giambi was not certain what the different pills were but believed one of them was Clomid. Separately, Giambi also obtained human growth hormone from “a guy in Las Vegas.” Anderson explained

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<sup>346</sup> On the advice of his lawyer, Giambi declined to answer any questions about performance enhancing substances for the period before 2001, invoking the Fifth Amendment privilege against self-incrimination.

to Giambi how to inject the growth hormone into his abdomen. Giambi paid Anderson, once by check and once in cash or by money order, for a total of about \$7,000 to \$10,000. Separately, Giambi paid his Las Vegas source about \$1,000 for one kit of human growth hormone.

Giambi confirmed that Anderson described the “cream” and the “clear” to him as an “alternative” to steroids or “something other than steroids that would boost testosterone and epitestosterone levels.” He began the “Anderson program” in December 2002 or January 2003. While following the program, he injected himself with two to three IUs (“international units”) of human growth hormone three days a week and with one cc of testosterone a week (although he only used testosterone for a short period).<sup>347</sup> Giambi took the other pills about three days per week and used the “cream” and the “clear” twice per week, all in accordance with the calendar that Anderson had provided him. Giambi continued using these substances through the 2003 All-Star break. At that time, Giambi injured his knee sliding into a base and decided to stop using the substances because he was not sure what impact they would have on his ability to recover. Giambi told me that he has not used any performance enhancing substances since the 2003 All-Star break.

e. Jeremy Giambi

On March 12, 2005, Jeremy Giambi admitted to the Kansas City Star that he used steroids while playing in Major League Baseball. “It’s something I did,” Giambi told the newspaper. “I apologize. I made a mistake. I moved on. I kind of want it in the past.”<sup>348</sup>

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<sup>347</sup> “IU” is a measurement for the amount of a substance based on its biological activity. The measure varies depending on the substance being measured.

<sup>348</sup> Jeff Passan, *Ex-Royal: Using steroids a mistake*, Kan. City Star, Mar. 13, 2005, at C5. With regard to his brother Jason’s then-recent press conference apology, Giambi also reportedly told the reporter: “If you don’t know what he is apologizing for you must’ve been in a coma for two years.” *Id.*

We spoke with Ethan Stein, a former minor league player who played two seasons with Jeremy Giambi, 1996 in Spokane and 1997 in Lansing, and frequently trained and had occasional conversations with him in the weight room. Stein said that during one of those conversations in 1996, Giambi admitted that both he and his brother used steroids and told Stein that he could get him steroids. Stein responded that he was not interested. When Stein later saw Giambi during spring training in 1997, his physique had changed dramatically. He noticed increased muscular development, as well as hair loss and back acne.

f. Benito Santiago

In *Game of Shadows*, the authors wrote that when drug testers approached San Francisco Giants catcher Benito Santiago to collect a urine sample in 2003, Santiago panicked and fled the clubhouse. According to the authors, Santiago “returned 20 minutes later, relaxed and ready to cooperate. He had discussed the test with Bonds, he explained. Everything was fine, he was taking the same stuff as Barry.”<sup>349</sup> The authors also alleged that Santiago told the BALCO grand jury that he injected himself with human growth hormone.<sup>350</sup>

At the end of the 2003 season, Mike Murphy, a Giants clubhouse attendant, was cleaning out Santiago’s locker when he found a sealed package of syringes. Murphy brought the syringes to the training room, handed them to Conte, and told Conte that he had found them in Santiago’s locker. Conte responded that he “would take care of it.” Murphy recalled that the Giants’ assistant athletic trainer Dave Groeschner also was present in the training room during this conversation.

At the time, Santiago was the Giants’ starting catcher and had been named as a BALCO client in a memorandum recounting the interview of Jim Valente during the federal raid

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<sup>349</sup> *Game of Shadows* at 144.

<sup>350</sup> *Id.* at 206.

of BALCO's offices on September 3, 2003.<sup>351</sup> Greg Anderson also told federal agents that Santiago was a client, and in his interview during the federal raid on his condominium he reportedly said he had supplied Santiago with human growth hormone.<sup>352</sup>

Conte told us that Murphy did not identify Santiago as the source of the syringes but instead claimed that Murphy had told him they were found in "*the* catcher's locker," suggesting the syringes had been found in the locker belonging to Santiago, who was then the Giants' starting catcher. Murphy failed to disclose this incident at all during his first interview. When asked about it again during a follow-up interview, Murphy acknowledged that the incident had occurred and said that he had told Conte specifically that he had found the syringes in Santiago's locker.

The Giants' assistant athletic trainer Dave Groeschner remembered the incident as well. He recalled that after Murphy left the trainers' room, he and the trainers talked among themselves and decided simply to dispose of the syringes. They did not follow up with Santiago because they knew he was leaving the team at the end of that season. Santiago became a free agent after the 2003 season and signed with the Kansas City Royals in December 2003.

Conte did not view the incident as a "big deal," and he did not investigate the matter further or report the incident to Giants management or to the Commissioner's Office. Likewise, Conte did not confront "the catcher" about the incident.

g. ~~Gary Sheffield~~

On March 16, 2006, a federal magistrate judge from Idaho, Judge Larry M. Boyle, wrote a letter to Commissioner Selig in which he enclosed a copy of an earlier letter he had sent on February 26, 2004 to the United States Attorney for Idaho. In that earlier letter, Judge Boyle

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<sup>351</sup> IRS Memorandum of Interview of Jim Valente, dated Sept. 3, 2003, ¶ 6.

<sup>352</sup> IRS Memorandum of Interview of Greg Anderson, dated Sept. 3, 2003, ¶ 4

reported that on June 11, 2002, after a flight from Boise to Minneapolis, he boarded a shuttle bus and was seated across the aisle from a man who later identified himself as Greg Anderson. Boyle had a conversation with Anderson during the ride in which Anderson said he was in Minneapolis because his “best client wanted him to help his close friend Gary Sheffield who was in a slump and struggling at the time.”

According to the letter, Anderson told Boyle that Sheffield’s team was playing the Twins that week and Anderson had “come to work with him.” When Boyle asked what in particular Anderson did for his baseball player clients, Anderson responded:

[H]e will usually reserve the hotel exercise facility and work privately with Sheffield on body mechanics, weights and also take a blood or urine sample, test it to determine if his body chemistry is what it should be, and then give him nutritional supplements.

Anderson confirmed to Boyle that his “best client” was Barry Bonds. Boyle concluded the letter by stating he “felt his conversation was sufficiently important to report it to you in light of the legal proceedings pending in another federal district.”<sup>353</sup> Through his lawyer, Boyle confirmed to us the events described in his letter.

In September 2003, when federal agents executed a search warrant on Greg Anderson’s condominium, they cited a February 2003 FedEx receipt from Gary Sheffield to BALCO as evidence of probable cause to conduct the search.<sup>354</sup> In his 2007 book entitled *Inside Power*, Sheffield acknowledged he had received a bill from BALCO for what he called

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<sup>353</sup> Letter from Magistrate Judge Larry M. Boyle to Allan H. “Bud” Selig, dated Mar. 16, 2006.

<sup>354</sup> See Affidavit of Special Agent Brian Watson in Support of Request for Search Warrants, sworn to on Sept. 3, 2003, ¶ 10.



“vitamins” and claimed he did not know whether the “cream” he acknowledged using during his grand jury testimony had contained steroids.<sup>355</sup>

In his book, Sheffield recounted his grand jury testimony as follows: “I applied this cream to my knees.’ I told them ‘I didn’t know it was steroids. Whatever it was, it didn’t make me stronger.’”<sup>356</sup> Sheffield then claimed in his book: “I had no interest in steroids. I didn’t need them, and I didn’t want them.”<sup>357</sup> His book asserted that he “never touched a strength-building steroid in [his] life – and never will.”<sup>358</sup>

In his book, Sheffield attributed the increase in home runs in Major League Baseball after the 1994 strike to widespread steroid use, and he claimed that at the time he asked the Commissioner to investigate the issue, only to be ignored.<sup>359</sup> Selig denied that he ever received such a request from Sheffield.

h. Randy Velarde

Randy Velarde admitted to us, through his lawyer, that he had used performance enhancing substances he obtained from Greg Anderson. According to his lawyer, if interviewed, Velarde would have told us he received the “cream” and the “clear” from Anderson in a transaction that occurred in a parking lot during spring training in 2003. Velarde was playing for the Oakland Athletics at the time, was near the end of his career and was attempting to play for another year to support his family.

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<sup>355</sup> Gary Sheffield and David Ritz, *Inside Power* 183 (Random House 2007).

<sup>356</sup> *Id.* at 184-85.

<sup>357</sup> *Id.* at 183.

<sup>358</sup> *Id.* at 184.

<sup>359</sup> *Id.*

VIII. Information Obtained Regarding Other Players' Possession or Use of Steroids and Human Growth Hormone

A. Background

On December 14, 2005, federal law enforcement agents executed a search warrant at the home of Kirk Radomski, a personal trainer and former employee of the New York Mets who was suspected of selling anabolic steroids and human growth hormone to professional baseball players.<sup>360</sup> During the search, agents seized documents relating to Radomski's distribution of performance enhancing substances, primarily to Major League Baseball players, including Radomski's address book and receipts documenting the shipment of packages to players.<sup>361</sup>

Radomski then began cooperating with the United States Attorney's Office for the Northern District of California, and that cooperation continues to this day. After he began cooperating, Radomski obtained and produced many other documents, among them copies of cancelled checks, money orders, other bank records, and telephone records.

1. Kirk Radomski's Cooperation

On April 26, 2007, Radomski signed a plea agreement with the U.S. Attorney's Office, in which he agreed to plead guilty to one count of distribution of anabolic steroids and one count of money laundering.<sup>362</sup> In that agreement, Radomski admitted that from 1995 until

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<sup>360</sup> Redacted Affidavit in Support of Application for a Search Warrant, *United States v. Unidentified Premises*, No. 05-1539 (E.D.N.Y. Dec. 13, 2005); U.S. Federal News, *Information Issued by U.S. Attorney's Office for the Northern District of California: Steroid Dealer to Major League Baseball Players Pleads Guilty* (Apr. 27, 2007).

<sup>361</sup> See Juliet Macur, *Guilty Plea Widens Baseball's Steroids Scandal*, N.Y. Times, Apr. 28, 2007, at A1; see also T.J. Quinn, *Foul Air in Baseball; Confession of Ex-Mets Attendant and Steroid Dealer Threatens Tremor*, N.Y. Daily News, Apr. 29, 2007, at 58.

<sup>362</sup> Plea Agreement, *United States v. Kirk J. Radomski*, CR No. 07-0222 (N.D. Cal.), at 1. A copy of the plea agreement is included in the Appendix.

December 2005 he distributed anabolic steroids, human growth hormone, and clenbuterol, as well as amphetamines, to “dozens of current and former Major League Baseball players . . . and associates,” and that his network of clients ultimately could be traced to contacts he made during his “past employment in Major League Baseball.”<sup>363</sup> Radomski’s guilty plea was entered the next day.

The plea agreement required Radomski to cooperate with the U.S. Attorney’s Office, which directed Radomski to provide complete and truthful information to me and to my investigative staff as part of his cooperation.<sup>364</sup> I agreed that I would not make any public statements about the information provided by Radomski, including the statements in this report, without the approval of that Office. Given the ongoing nature of Radomski’s cooperation, the U.S. Attorney’s Office required this agreement to assure itself that nothing I published would compromise any of its ongoing investigative efforts and that, in that Office’s view, I accurately reported the evidence supplied by Radomski. I agreed to this condition and have complied with it. I am grateful to the U.S. Attorney’s Office for its cooperation.

The U.S. Attorney’s Office has agreed to recommend that Radomski receive a more lenient sentence if it concludes that he cooperated completely and truthfully, including with regard to the information he provided to me. Radomski also has been advised that if the U.S. Attorney’s Office concludes he has not been truthful or candid with that Office or with me, he not only could lose the benefit of a recommendation of a lesser sentence but could be subject to additional prosecution.

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<sup>363</sup> Radomski Plea Agreement at 3, lines 6-7, 11.

<sup>364</sup> Radomski Plea Agreement at 5, lines 11-24; Press Release, U.S. Dep’t of Justice, *Steroid Dealer to Major League Baseball Players Pleads Guilty* (Apr. 27, 2007).

In addition to his statements, Radomski provided us with copies of bank, telephone, and other records that corroborated his statements. Copies of the checks and money orders relating to reported purchases of performance enhancing substances by the players who are named in this section are attached to this report in an appendix. We have redacted the copies of checks, money orders, and other documents that are reproduced in this report to remove spouses' names, account numbers, addresses, and other non-relevant information.

Radomski told us that the checks and money orders he provided did not reflect the full breadth of his distribution network, for several reasons. Although Radomski approached the banks he had used while distributing illegal substances in an effort to retrieve all records they had of checks deposited into his accounts, the banks could only obtain copies of some of his deposited checks and could not provide any checks which pre-dated 2000. Radomski, however, began selling steroids and other substances in the mid-1990s. Additionally, Radomski stated that, on many occasions, he cashed checks or money orders instead of depositing them, and the banks did not retain copies of cashed checks or money orders that were not deposited into Radomski's accounts. Finally, Radomski sometimes was paid in cash. As a result, in most cases the number of sales Radomski stated he made to a particular player does not correspond to the number of checks from the player that Radomski was able to retrieve from his banks.

Where checks or money orders were not available, other documents often corroborated Radomski's testimony. For example, he provided detailed telephone records covering the period from June 2004 to June 2006. They show many calls made to telephone numbers that correspond to the numbers of Major League Baseball players.<sup>365</sup> Radomski's address book also was provided to us in the form in which it existed when federal agents seized it

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<sup>365</sup> Copies of earlier records were not available, according to Radomski's telephone company.

during the execution of a search warrant at his home in December 2005.<sup>366</sup> It includes many names and addresses of current and former Major League Baseball players. He also maintained copies of some delivery receipts, although he said that in the ordinary course of housekeeping he had discarded most of those documents and the few that were found by federal agents when executing their search warrants were simply “ones [he] missed.”

## 2. Radomski’s Employment with the New York Mets

Growing up, Radomski lived near Charlie Samuels, the longtime equipment manager for the New York Mets. In the early 1980s, Radomski began helping out around the clubhouse in an informal capacity as a batboy. He was formally hired as a home clubhouse attendant in 1987. He worked in the Mets clubhouse in various capacities until November 1994, when he left because the team restructured the compensation of clubhouse staff and the pay was less than the income he could earn as a personal trainer. His departure was not related to his involvement with steroids, and Radomski stressed that Samuels never had any knowledge of that involvement.

Radomski developed many friendships with players while he was working with the Mets, especially after he began attending spring training in 1988. Around that time, he became interested in weight training and began exercising regularly at a gym in the Bronx. In the early 1990s, Radomski decided he wanted to become a competitive bodybuilder. He knew the use of anabolic steroids was prevalent in that sport, and he did a great deal of research about various types of steroids and their effects. He began using Winstrol and Deca-Durabolin in six-to-eight-week cycles.

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<sup>366</sup> I refer in this report to Radomski’s “address book”; it is a collection of unbound papers that list names, addresses, and telephone numbers.

In 1993, when Radomski arrived at spring training significantly bigger, many players noticed and asked him about his size and training program. He told them he was using steroids as part of his training regimen. Even before then, players had consulted Radomski about diet and weight training because it was obvious from his own habits and appearance that he was knowledgeable about those subjects. He often prepared nutritional shakes in the clubhouse for his own use as well as for Mets players who asked him to do so.

3. Radomski's Distribution of Performance Enhancing Substances to Major League Baseball Players

Radomski said that his dealing in performance enhancing substances began in response to inquiries from players. Radomski had many conversations with players in which he discussed the pros and cons of various performance enhancing substances, as well as how to use them, what their side effects were, and whether their use could be detected in drug tests. Many players who contacted Radomski about these issues never bought any illegal substances from him.

A number of players to whom Radomski supplied performance enhancing substances confirmed that he never solicited them to purchase these substances. The former players we spoke with confirmed that Radomski's distribution network grew through word-of-mouth referrals among major league players. On some occasions, players acted as intermediaries to obtain steroids or human growth hormone from Radomski on behalf of their teammates or friends.

Radomski met with a number of players while they were in New York. Most of his business, however, was conducted by telephone and by mail or express delivery service. In those instances, Radomski received payment through the mail (by check, money order, or cash) and sent drugs by express mail or express delivery service to players at their homes, hotels or,

occasionally, to their attention at their teams' clubhouses. Radomski said that no player ever expressed concern about having anabolic steroids or human growth hormone mailed to him at his team's clubhouse.

Even before drug testing began in Major League Baseball, Radomski observed that players were moving away from oil-based anabolic steroids, such as Deca-Durabolin, that stay in the body for a long time. Instead, the players increasingly requested water-based anabolic steroids, such as Winstrol, and other drugs such as clenbuterol and human growth hormone, that cleared the body faster and were less likely to be detected. That trend continued after drug testing began. Radomski recalled that several players asked him whether human growth hormone could be detected in urine tests. Chad Allen, a former player who was a customer of Radomski, told us that human growth hormone is now the drug of choice for those players who can afford it because it is not detectable. He believes that Major League Baseball will always have a difficult time keeping up with drug developments because "there's always someone ahead of the curve who knows that he will make a quick buck."

This is significant. Major League Baseball has sharply increased the penalties for violation of its testing program (a 50-game suspension is now imposed for a first offense). Yet Radomski's experience shows that, even before testing had started, the players began to migrate to illegal performance enhancing substances that are more difficult or impossible to detect. This evidence helps inform my judgment that an approach that includes but is not limited to drug testing is necessary to effectively combat performance enhancing substance use, as is set forth in the Recommendations section of this report.

Radomski continued to make significant sales of steroids, human growth hormone, and clenbuterol after drug testing was in place. In Radomski's view, using human

growth hormone will not make a player stronger but will decrease recovery time so that the player can work out harder and more frequently to attain greater strength.<sup>367</sup> Radomski also stated that he felt that the side effects of human growth hormone were less severe than those of anabolic steroids.

Radomski's sources for anabolic steroids were mainly "people he knew at the gyms," who he could not further identify. He paid between \$100 and \$300 per bottle, depending on the substance. For human growth hormone, Radomski approached patients as they were leaving pharmacies and offered to purchase a portion of their just-filled prescriptions. According to Radomski, a typical human growth hormone prescription included four boxes of human growth hormone per month. As word spread that bodybuilders were interested in human growth hormone, individuals who had just filled their prescriptions for the substance went to gyms looking to sell the excess portions of their prescriptions.<sup>368</sup>

Radomski typically paid at least \$1,000 or more for one "kit" of human growth hormone, which included seven vials of distilled water and the same number of packages of lyophilized human growth hormone powder, but the price depended on availability. He generally

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<sup>367</sup> Radomski himself took human growth hormone from 2002 or 2003 until 2005.

<sup>368</sup> This phenomenon has been reported on before. See Thomas Zambito, *Pumped by AIDS Drug; Some Bodybuilders Break the Law to Score Serostim*, N.Y. Daily News, June 2, 2003, at 5; see also Tim Reiterman, *Black Market in AIDS Drug Flourishes; Control of Hormone is Laxer in California Than Elsewhere; Medi-Cal Says It has Stiffened Rules*, L.A. Times, Feb. 16, 2003, at 1. The office of the New York Attorney General estimated that fraudulent sales of human growth hormone and other prescription drugs amounted to ten percent of New York's \$3 billion in Medicaid drug expenses in 2002. Amy Klein, *5 Accused of Black Market Drug Ring ; Police Find \$4.5M in AIDS Medicines*, The Record (Bergen County, N.J.), Aug. 29, 2003, at A1. In his 2003 interview by federal law enforcement agents, Greg Anderson reportedly said that he also "receive[d] the testosterone and human growth hormone that he distribute[d] from AIDS patients in San Francisco who have prescriptions for them." Internal Revenue Service Memorandum of Interview of Greg Anderson, Sept. 3, 2003, at 3.



resold kits for \$1,600 each, but in some instances charged less depending on his relationship with the player.

B. Information Regarding Purchases or Use of Performance Enhancing Substances by Players in Major League Baseball

This section summarizes the information provided by Radomski and other individuals concerning the illegal purchase or use of performance enhancing substances by current and former players in Major League Baseball. Since this was not a judicial proceeding, none of the persons who provided information testified under oath. However, Radomski, former New York Yankees and Toronto Blue Jays strength coach Brian McNamee, and former major league players Chad Allen and Larry Bigbie all provided information during interviews attended by federal prosecutors and law enforcement agents during which each was advised that he faced potential criminal exposure if he made false statements.<sup>369</sup> Radomski and McNamee were also advised by their own personal lawyers before providing their cooperation and during the interviews.

In addition, former Albuquerque Dukes strength coach Todd Seyler and former major league player Adam Piatt both provided information to our investigation. Both were interviewed twice; Piatt was represented by his own lawyer during both of his interviews. Seven other former major league players and one current major league player admitted to their own use or possession of performance enhancing substances.

I carefully reviewed and considered all of the information we received about the purchase, possession, or use of performance enhancing substances by Major League Baseball players.

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<sup>369</sup> See 18 U.S.C. § 1001 (providing for criminal penalties for making knowingly false statements “in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States”).

1. Kirk Radomski provided substantial information about the distribution of performance enhancing substances, and in many cases his statements were corroborated by other evidence. He did not, however, observe or participate in the use of performance enhancing substances by any player named in this report, with one exception that is described below.

The corroboration took many forms, including: (a) the admission by eleven players that Radomski had supplied them with performance enhancing substances, as he had said in our interviews of him;<sup>370</sup> (b) checks or money orders written to Radomski by some players in appropriate amounts; (c) mailing receipts for shipments of performance enhancing substances by Radomski to some players; (d) statements by other witnesses supporting the allegations of use by some players; (e) the names, addresses, and/or telephone numbers of many players were found in Radomski's seized address book; (f) telephone records showing calls between Radomski and some players; and (g) a positive drug test.

I did not include in this report the names of three players to whom Radomski said he sold performance enhancing substances: two of them because the players had retired from Major League Baseball by the time of the alleged sales; and one of them because the player admitted that he had purchased and possessed the substances but denied that he had used them and his version of events was corroborated by other credible evidence.

I interviewed Radomski four times (in June, July, October, and November 2007), three times in person, once by telephone. His personal lawyer participated in three of the interviews. Federal law enforcement officials and members of my staff participated with me in all of the interviews. No one from the Commissioner's Office, any club, or the Players Association participated in these interviews.

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<sup>370</sup> Two players admitted receipt and possession of illegal performance enhancing substances sold by Radomski but denied they ever used them.

During each of the interviews, the law enforcement officials warned Radomski that if he made any false statements he would forfeit their commitment to recommend a more lenient sentence and he would face further criminal jeopardy. Before the interviews, Radomski had been debriefed extensively by federal prosecutors and agents. They subsequently confirmed that the information he provided to us in his interviews was consistent with the information he had previously provided to them.

2. Six players are named in this chapter based on information obtained from persons other than Radomski or former major league strength and conditioning coach Brian McNamee. In each case, these allegations are supported by one or more of the following: (a) checks; (b) prior consistent statements; (c) a statement made about a player's use where the witness was a friend of the player identified and under circumstances in which the witness faced criminal exposure for making a false statement; (d) statements reporting a witness's direct observation of the player using a performance enhancing substance; or (e) the player's own admission of his use.

3. Brian McNamee said that he was a direct eyewitness and participant in alleged illegal use by three players who he served as a personal trainer. I interviewed him three times (in July, October, and December 2007), once in person and twice by telephone.<sup>371</sup> His personal lawyer participated in each interview. Federal law enforcement officials and members of my staff participated with me in all of the interviews. No one from the Commissioner's Office, any club, or the Players Association participated in these interviews.

During each of the interviews, the law enforcement officials warned him that he faced criminal jeopardy if he made any false statements. With respect to two of the players,

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<sup>371</sup> In addition, a member of my investigative staff interviewed him by telephone on a fourth occasion in December 2007; his personal lawyer also participated.

McNamee was acting against his financial interest in disclosing this information. Before the interviews, McNamee had been debriefed extensively by federal prosecutors and agents. They subsequently confirmed that the information he provided to us in his interviews was consistent with the information he had previously provided to them.

The players for whom evidence has been gathered of possession or use, or both, of illegal performance enhancing substances defy categorization. They include winners of Most Valuable Player and Cy Young awards, members of All-Star teams and World Series rosters, players whose tenures in the major leagues were long, and others whose tenures were brief. We heard often about the pressure on marginal players to use performance enhancing substances because they believed they needed to do so to keep up with the competition or because the money was so much greater for those who could make the jump to the major leagues. For example, Dr. Allan Lans, the former Mets Employee Assistance Program director, visited every player in the Mets' minor league organization who tested positive for performance enhancing substances or drugs of abuse. The players who tested positive for performance enhancing substances frequently offered this explanation for using them.

From the outset, my objective in this investigation has been “to gather facts,” to prepare a report that is thorough, accurate, and fair, and to “provide those whose reputations have been, or might be, called into question by these allegations a fair opportunity to be heard.”<sup>372</sup> Each player mentioned in this report, and others not mentioned, was provided that fair opportunity; each was invited to meet with me, with his personal lawyer and a lawyer from the Players Association if he so chose, so that I could provide him with information about the allegations against him and give him the opportunity to respond. Most players declined to meet

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<sup>372</sup> Statement of Sen. George J. Mitchell, dated Mar. 30, 2006.

with me. I gave careful consideration to the explanations provided by the few players who did agree to an interview, or, because of their current major league club employment, were compelled to do so.

The following discussion is organized in roughly chronological order. Records do not exist to document every transaction described by witnesses. Radomski stated that, with one exception noted below, the payments he received from professional baseball players were for performance enhancing substances, as opposed to personal training or other services, and this assertion was confirmed by those players who agreed to speak with us about their dealings with him.

***Lenny Dykstra***

Lenny Dykstra played as an outfielder in Major League Baseball with two clubs, the New York Mets and Philadelphia Phillies, from 1985 to 1996. As a player with the Phillies, Dykstra played in three All-Star games and finished second in Most Valuable Player balloting in 1993.

Radomski first met Dykstra when he was playing for the Mets and became “very close with Lenny.” According to Radomski, when Dykstra reported to spring training in 1989, “his increased size was noticeable.” When Radomski asked him about his increased size, Dykstra admitted to taking steroids. Radomski also recalled that Dykstra’s weight fluctuated during that spring training. He stated that members of the Mets’ management discussed Dykstra’s weight fluctuations with the team’s athletic trainers and that “the trainers would just laugh.”<sup>373</sup>

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<sup>373</sup> As discussed earlier in this report, there were many news reports speculating about Dykstra’s possible use of steroids during his playing career. *See supra* at 66-67.

After the Phillies lost the 1993 World Series, Dykstra called Radomski and asked whether Radomski could get Dykstra steroids. Although Radomski does not remember the exact time frame, he recalled providing Dykstra with Deca-Durabolin, Dianabol, and testosterone.

Since approximately 2000, the Commissioner's Office has been aware that Dykstra used anabolic steroids during his playing career. At that time, senior vice president for security Kevin M. Hallinan, his deputy Martin Maguire, and then-executive vice president for baseball operations Sandy Alderson met with Dykstra and his doctor in an attempt to increase their understanding of steroids. Hallinan said that Dykstra admitted to using steroids, saying that he used them to "keep his weight up" during the season. According to Hallinan, Dykstra said using steroids eliminated the need for him to work out during the season.

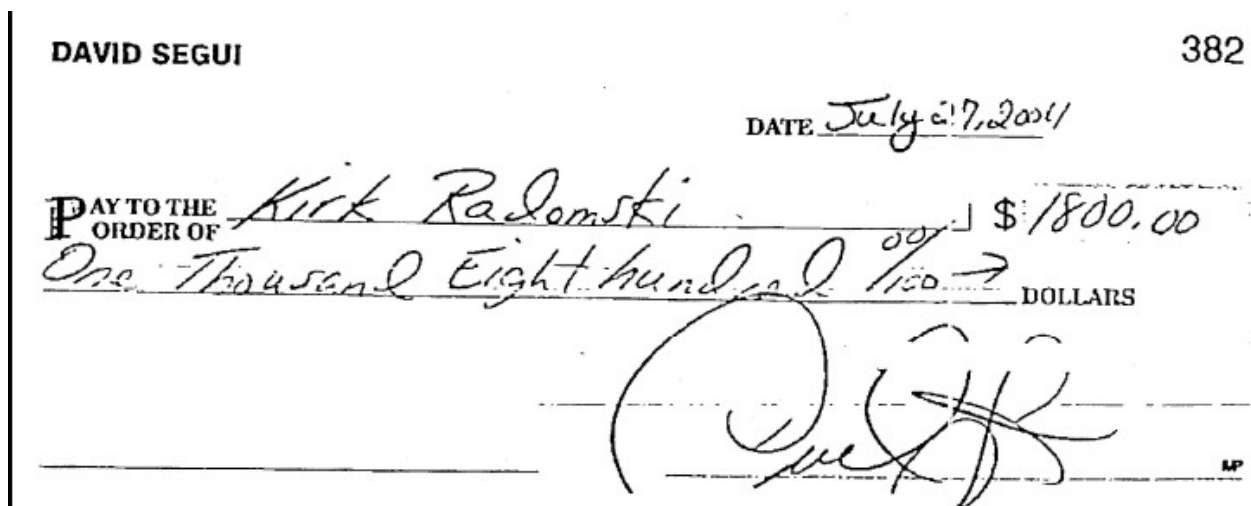
In order to provide Dykstra with information about these allegations and to give him an opportunity to respond, I asked him to meet with me; he never agreed to an interview.

### ***David Segui***

David Segui played as an infielder for seven different teams in Major League Baseball from 1990 until 2004, the Baltimore Orioles (8 seasons), New York Mets (parts of 2 seasons), Montreal Expos (parts of 3 seasons), Seattle Mariners (parts of 2 seasons), Toronto Blue Jays (part of 1 season), Texas Rangers (part of 1 season), and Cleveland Indians (part of 1 season).

In 1994, while Segui was playing for the Mets, he and Radomski became friends. According to Radomski, Segui admitted to him that he used steroids during that season. Radomski recalled that either at the very end of Segui's time with the Mets (1995) or shortly thereafter, Segui showed him a bottle of anabolic steroids he had received from Mexico (these were veterinary steroids, according to Radomski). In a subsequent meeting, Radomski gave Segui without charge a bottle of Deca-Durabolin and told Segui to try it.

Segui then began purchasing steroids from Radomski. According to Radomski, Deca-Durabolin was Segui's steroid of choice in the 1990s because it was safe, did not expire for three to four years, and was thought to help alleviate joint pain. Deca-Durabolin, however, stays in the body for up to a year or more and therefore is easily detectable in tests.<sup>374</sup> Radomski said that Segui paid for the steroids by check although Radomski never asked him to pay for them. Radomski produced six checks drawn on David Segui's checking account that were deposited into Radomski's checking account. All are included in the Appendix. One is shown below.



Radomski said he engaged in more than twelve transactions with Segui and dealt with Segui more than any other player. Toward the end of his career, Segui told Radomski that he had a growth hormone deficiency and was getting human growth hormone from a doctor in Florida.

Segui's name, with two addresses and several telephone numbers, is listed in the address book seized by federal agents from Radomski's residence. Radomski's 2004-05

<sup>374</sup> In the view of steroid abusers, "[t]he major drawback [of Deca-Durabolin] for competitive purposes is that in many cases it will be detectable for up to a year or more after use." William Llewellyn, *Anabolics 2006* 122 (5th ed. 2006).

telephone records include eleven calls made by Radomski to Segui's number between July and October 2004, when Segui retired from baseball.

Segui is the only player who called Radomski after news of his plea agreement was reported in the media. Segui asked Radomski if there was anything he could do for him. Radomski told Segui that he likely would have to tell the government about Segui's steroid and growth hormone use, and Segui responded that he did not care.

In a telephone conversation with members of my investigative staff and federal investigators, Segui said that he would not name any other player and he declined to be interviewed in person. In our telephone conversation, Segui stated that he still thinks highly of Radomski and that Radomski did not push drugs on any player. According to Segui, Radomski was "doing the players a favor" and they were "lucky to have a guy like Radomski," because Radomski provided safe performance enhancing substances, in contrast to what the players might receive from other sources.

Ultimately, Segui made his use public when he told ESPN in June 2006 that he believed he was one of the players whose names had been redacted from a federal agent's affidavit in support of a search warrant for Jason Grimsley's residence in Arizona.<sup>375</sup>

### ***Larry Bigbie***

Larry Bigbie played as an outfielder in Major League Baseball from 2001 to 2006 for the Baltimore Orioles, Colorado Rockies, and St. Louis Cardinals. In 2007, Bigbie played in the minor leagues.

Radomski said that David Segui introduced Bigbie to him. Segui and Bigbie were teammates on the Orioles from 2001 through 2004. When Segui came to New York, Radomski

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<sup>375</sup> See *Transcript: David Segui's interview with ESPN*, espn.com (June 18, 2006); see also Bob Nightengale, *Ex-player Segui Admits HGH Use*, USA Today (June 19, 2006), at C1.



occasionally socialized with him and some of the younger Orioles players, one of whom was Bigbie. Radomski's first contact with Bigbie was in 2003. Thereafter, Radomski sold a variety of performance enhancing substances to Bigbie on a number of occasions. Bigbie consistently paid by check. Because Bigbie was young and "not making that much money," Radomski said he charged Bigbie no more than his cost for the substances.

Radomski retrieved from his banks three checks written by Bigbie. All are included in the Appendix. The first was dated June 4, 2004, in the amount of \$200, with a memo stating "DUES." Radomski believed this may have been payment for supplements, not performance enhancing substances.<sup>376</sup> The second, dated March 5, 2005, in the amount of \$1,200, was for human growth hormone. This check is shown below. The third check, dated May 6, 2005, in the amount of \$1,300, with a memo stating "Supplements," was for two kits of human growth hormone.

**LARRY R BIGBIE** **433**

DATE 3/5/05

PAY TO THE ORDER OF Kirk Radomski \$ 1,200.00

One thousand two hundred dollars and 00/100 DOLLARS

MEMO \_\_\_\_\_ LR

<sup>376</sup> Bigbie believes this check was most likely for an amount outstanding from an earlier purchase for performance enhancing substances.

Bigbie's name, with two addresses and a telephone number, is listed in the address book seized from Radomski's residence by federal agents. The agents also seized a piece of a shipping receipt with Bigbie's address.

Bigbie has been cooperating with federal authorities in connection with their investigations into the illegal distribution of performance enhancing substances. As part of his cooperation and at the request of federal law enforcement authorities, Bigbie agreed to be interviewed by members of my investigative staff. Federal law enforcement agents were present at the interview and advised him that any false statements made in their presence during the interview could be considered a violation of federal law.

Bigbie's account of his use and interaction with Radomski was consistent with Radomski's account. Bigbie said that when he was first promoted to the Orioles' major league club in June 2001, he quickly became a friend of David Segui. Segui allowed Bigbie to live in his house rent-free for the 2001 season.

According to Bigbie, Segui never "pushed" any drugs on him. Bigbie sought Segui's advice on how to become more "competitive." Segui responded by educating Bigbie about various training regimens and the use of creatine. Bigbie had never before used steroids but wanted to be more competitive, and therefore raised the subject with Segui. Bigbie said that Segui was knowledgeable about steroids; he described to Bigbie the types of steroids Bigbie should use to gain weight and the types to use to "get more trim."

Toward the end of the 2001 season, Bigbie used Deca-Durabolin for the first time. Bigbie was afraid of needles, so he had Segui inject him. Segui provided the steroids at no charge. Bigbie said that Segui initially placed him on a cycle of Deca-Durabolin twice a week and testosterone three times a week. Bigbie took a second cycle of steroids, this time Sustanon

(also supplied by Segui at no charge), which he began in late November or early December 2001 and continued until spring training in 2002. He coupled this anabolic steroid use with regular strength workouts.<sup>377</sup> Bigbie's body underwent significant changes by spring training of 2002. He said that "you can't even compare it." His weight increased from 190 pounds to 220 pounds, but with only seven percent body fat. Bigbie said that when he reported to spring training in 2002, several players and the Orioles strength coach commented on his enhanced physique.<sup>378</sup>

In 2002, Bigbie was injured and essentially missed the entire season. During the off-season prior to the 2003 season, Bigbie used Deca-Durabolin and testosterone from about November until the start of spring training. He said that he was educated enough about steroid use by then that he thought he did not need guidance. He obtained the steroids from a dealer at a local gym, and a friend administered the injections.

Bigbie believed that 2003 was a "make or break" season for him, leading him to use steroids extensively during the off-season. At Segui's suggestion, he also used anti-estrogen drugs, which he obtained from Segui, when he stopped using steroids. Bigbie used Deca-Durabolin and testosterone during the season. Once again, Segui supplied him with the anabolic steroids at no charge.

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<sup>377</sup> Bigbie did give Segui a check for \$1,000 at the end of the 2001 season but said that the payment was a gesture of thanks for allowing Bigbie to live rent-free at Segui's house. Bigbie noted that he was making the major league minimum salary while Segui was making \$7 million a year.

<sup>378</sup> Tim Bishop, the Orioles former strength and conditioning coach, has been reported to have said that a player on a vigorous weight program for five months in the off-season would be doing "very good" to gain ten pounds of muscle mass. *See* Mel Antonen, *USA Today Poll: 79% of Players Want Drug Testing*, USA Today, July 8, 2002, at 4. Bishop reportedly said, "Anything more than that, it's a sure sign that something else is going on." *Id.* When my investigative staff asked Bishop about this quote, Bishop acknowledged that it was accurate but said that by "something else" he was referring only to creatine and protein shakes.

Bigbie said he was unconcerned about Major League Baseball's "survey" drug testing that began in 2003. He knew all players would be tested but that no one's name would be revealed in the event of a positive test.

Bigbie recalled meeting Kirk Radomski in 2003 during a trip to New York. Segui introduced Bigbie and Brian Roberts to Radomski over lunch. Afterward, Segui made a steroid purchase from Radomski from inside Radomski's car, which, according to Bigbie, was heavily stocked with performance enhancing substances and paraphernalia. Roberts was not present. Bigbie recalled being "nervous as hell."<sup>379</sup> After Bigbie first met Radomski, Radomski called him occasionally to see how he was doing and just to chat, but not to solicit steroid sales. Bigbie never felt that Radomski pressured him to buy anything.

Later in the season, Bigbie pulled a hamstring muscle. He was sent to Sarasota on a rehabilitation assignment. To help him recover from the injury and finish the season strong, Bigbie purchased Sustanon and Deca-Durabolin from Radomski. Radomski addressed the package to Bigbie at his condominium in Florida, and Bigbie mailed Radomski a check for at least \$500.

Bigbie stayed in Baltimore during the 2003 off-season. He trained with Orioles strength and conditioning coach Tim Bishop, but they did not discuss performance enhancing substances. That off-season, Bigbie used fewer steroids than he had in the prior off-season because he knew he would be tested in the coming season. At the beginning of the off-season, to "jump-start" his training he did use some Deca-Durabolin and Sustanon for two or three weeks (he was not using while he was training with Bishop).

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<sup>379</sup> While Radomski did not recall this specific incident, he said that it was possible that it occurred.

It was at this time that he started to learn more about human growth hormone from Radomski, who said he could supply this substance as well. Radomski explained to Bigbie that there was no test for human growth hormone, that it would make Bigbie stronger and keep him lean, and that it would enhance his recovery from wear and tear as well as improve his sleep. Initially, Bigbie did not use human growth hormone because he was concerned about potential side effects, such as organ enlargement, cancer and cyst growth. He also was concerned that it might hinder his ability to have children.

With the continuation of steroid testing in 2004 by Major League Baseball, Bigbie reevaluated his options. He switched to human growth hormone before the 2004 season and never again took steroids. He paid Radomski approximately \$1,300 for one kit of human growth hormone, which he took every day for one month.

Bigbie was emphatic that the implementation of drug testing was the only reason he ever used human growth hormone. Before switching to human growth hormone, he talked to Segui. Bigbie knew Segui was using human growth hormone, but Segui told him he used it because his body was worn down from numerous injuries. According to Bigbie, Segui told him that “everyone” was going to jump to human growth hormone use after the implementation of steroid testing. Bigbie did not believe that he was seeing a benefit from using human growth hormone that was comparable to the effects he had seen with steroids.

Bigbie was tested during 2004. He had no concerns about testing positive because he was only taking human growth hormone then.

Bigbie estimated that he bought five or six kits of human growth hormone from Radomski in 2004 and 2005. He confirmed that checks written on his account on March 5 and

May 6, 2005, payable to Radomski, for \$1,200 and \$1,300, respectively, were each for one kit of human growth hormone, which he used shortly after receipt.

Bigbie was traded to the Colorado Rockies on July 30, 2005. He said that he did not use any performance enhancing substances during his two-month tenure with the Rockies.

On December 7, 2005, Bigbie was traded to the St. Louis Cardinals. He called Radomski to order human growth hormone to prepare for spring training. Radomski by then was cooperating with the federal authorities, who monitored the call. Bigbie was then approached by federal law enforcement authorities and began his cooperation with them.

Bigbie said he has not used performance enhancing substances since he began to cooperate with authorities. Bigbie stated that there was a lot of small talk among Cardinals players about steroids, and he discussed performance enhancing substances with one player who said that he had a source for any performance enhancing substance Bigbie might want.

***Brian Roberts***

Brian Roberts is an infielder who has played for the Baltimore Orioles since 2001. He has been selected to two All-Star teams.

Roberts and Larry Bigbie were both rookies in 2001. According to Bigbie, both he and Roberts lived in Segui's house in the Baltimore area during the latter part of that season. When Bigbie and Segui used steroids in the house, Roberts did not participate.

According to Bigbie, however, in 2004 Roberts admitted to him that he had injected himself once or twice with steroids in 2003. Until this admission, Bigbie had never suspected Roberts of using steroids.

In order to provide Roberts with information about these allegations and to give him an opportunity to respond, I asked him to meet with me; he declined.

### ***Jack Cust***

Jack Cust is an outfielder who began his major league career with the Arizona Diamondbacks in 2001. Since then, he has played for five teams in Major League Baseball, the Diamondbacks, Colorado Rockies, Baltimore Orioles, San Diego Padres, and Oakland Athletics. In 2007, he played with Oakland.

At the beginning of the 2003 season, Cust and Larry Bigbie were both playing for Baltimore's class AAA affiliate in Ottawa. Bigbie's locker was next to Cust's. Cust eventually asked Bigbie if he had ever tried steroids. Bigbie acknowledged he had, and Cust said that he, too, had tried steroids. Cust told Bigbie that he had a source who could procure anything he wanted, but Bigbie informed him he already had a friend who could supply him.

In order to provide Cust with information about these allegations and to give him an opportunity to respond, I asked him to meet with me; he declined.

### ***Tim Laker***

Tim Laker played as a catcher with five different teams in Major League Baseball between 1992 and 2006, the Montreal Expos, Baltimore Orioles, Tampa Bay Devil Rays, Pittsburgh Pirates, and Cleveland Indians. Much of his playing career was spent in the minor leagues. In 2007, Laker managed a minor league affiliate of the Cleveland Indians.

Laker and David Segui were teammates on the 1995 Montreal Expos. According to Radomski, Segui introduced him to Laker. Although Radomski could recall only one or two cash transactions with Laker in the late 1990s involving Deca-Durabolin and testosterone, Laker acknowledged a total of four transactions during our interview of him.

As a current club employee, Laker was required by the Commissioner to attend an interview. Laker said that he first considered using steroids before the 1995 season and researched steroids by reading magazines and talking to individuals outside of baseball about the

effects of steroids. Laker ultimately was convinced that using steroids would “enhance [his] performance.”

Laker confirmed that he was introduced to Radomski during the 1995 season while playing for the Montreal Expos. Laker said that he met Radomski at Laker’s New York City hotel when the Expos were in New York to play the New York Mets. Laker purchased testosterone and syringes from Radomski at the meeting, paying him between \$500 and \$1,000 in cash. Although Laker did not recall the quantity of performance enhancing substances that he purchased that day, he said that it was enough for one or two cycles of from eight to ten weeks each.

Laker’s next purchase of performance enhancing substances from Radomski was in late 1996 or early 1997, after Laker completed his rehabilitation from elbow surgery. Laker called Radomski and ordered testosterone and syringes, which Radomski sent to Laker’s California residence. Laker paid Radomski approximately \$1,000 by money order. In early 1998, Laker again called Radomski and ordered testosterone and syringes, which Radomski sent to Laker’s California residence. Laker again paid by money order in the approximate amount of \$1,000.

Laker’s final purchase of performance enhancing substances from Radomski was in person in 1999. Laker was playing for the Pittsburgh Pirates and was in New York for a series of games with the Mets. Laker met Radomski at his hotel and paid Radomski between \$1,000 to \$2,000 in cash for testosterone and syringes. This purchase lasted Laker into the 2000 season, at which time Laker said that he stopped using performance enhancing substances.

Laker followed the same regimen after each purchase of performance enhancing substances from Radomski. He injected himself in the buttocks once a week for eight to ten



weeks, took some time off, and then repeated the cycle. During home stands, Laker injected himself at his residence. On the road, Laker injected himself in his hotel room but brought the used syringes home with him to discard.

Laker said that he did not discuss his performance enhancing substance use with any of his clubs' coaches or management. He did recall that Ron McLain, a Montreal Expos athletic trainer, commented on Laker's improved physique in a manner that suggested that he thought Laker might be using steroids.

Laker's name, with a telephone number, is listed in the address book that was seized from Radomski's residence by federal agents. Laker admitted that the telephone number was his.

### *Josias Manzanillo*

Josias Manzanillo pitched for eight teams in Major League Baseball between 1991 and 2004, the Boston Red Sox, Milwaukee Brewers, New York Mets, New York Yankees, Seattle Mariners, Pittsburgh Pirates, Cincinnati Reds, and Florida Marlins.

Radomski stated that when he was working for the Mets in 1994, Manzanillo asked Radomski to inject him with the steroid Deca-Durabolin that Manzanillo provided. Radomski did so in the Mets clubhouse. Radomski said that this was the only instance in which he actually observed a major league player using steroids.

In order to provide Manzanillo with information about these allegations and to give him an opportunity to respond, I asked him to meet with me. His lawyer proposed arranging an interview, but we were unable to do so before the completion of the investigation. His lawyer provided the following proffer of what Manzanillo would say if he was interviewed:

Manzanillo claimed that a Mets clubhouse attendant nicknamed "Murdock" approached him repeatedly in the early 1990s and encouraged him to buy steroids. (Radomski's

nickname when he worked in the Mets clubhouse was “Murdock.”) The clubhouse attendant reportedly told Manzanillo that if he used steroids he would gain velocity on his fastball. Manzanillo ultimately paid for one cycle of steroids from “Murdock” for approximately \$200-\$250. After paying for the steroids, Manzanillo’s lawyer said, he “chickened out or thought better of it” and never actually took possession of the steroids. Through his lawyer, Manzanillo denied ever using performance enhancing substances.

Radomski said that he did not sell any steroids to Manzanillo and that his only substance-related involvement with Manzanillo was when he injected him with steroids in the clubhouse. Radomski stated that he remembered the event clearly because it was the only time he ever injected a player with steroids.

In 2001, Manzanillo was playing with the Pittsburgh Pirates. According to records produced by the Commissioner’s Office, on September 7, 2001, Jose Cervantes was detained by a resident security agent at the Angels’ stadium in Anaheim. Cervantes reportedly was found in possession of various prescription medications; he admitted that he brought drugs across the Mexican border and sold them to a number of major league players (but not steroids or human growth hormone). Cervantes provided the investigators with the names of those players to whom he had sold drugs; he also provided them with his cell phone and allowed them to retrieve the telephone numbers of those players. Cervantes said that he provided anti-inflammatory medications to Manzanillo, and Manzanillo’s name and telephone number were among those listed. Through his lawyer, Manzanillo said that he “knew nothing about such an incident” or why his name was in Cervantes’s cell phone directory.

### ***Todd Hundley***

Todd Hundley played as a catcher with three teams in Major League Baseball from 1990 until 2003 (the New York Mets, Los Angeles Dodgers, and Chicago Cubs). He was with the Mets from 1990 to 1998. He played in All-Star games in 1996 and 1997.

Radomski has known Hundley since 1988, when Radomski worked for the Mets and Hundley played in the Mets' minor league system.<sup>380</sup> Radomski stated that, beginning in 1996, he sold Deca-Durabolin and testosterone to Hundley on three or four occasions. At the beginning of that year, Radomski told Hundley that if he used steroids, he would hit 40 home runs. Hundley hit 41 home runs in 1996, having never hit more than 16 in any prior year. After the season, Radomski said, Hundley took him out to dinner.

Chris Donnels played with Hundley in 2000 when they were both with the Los Angeles Dodgers. Donnels admitted to my investigative staff that Radomski supplied him with performance enhancing substances. Donnels recalled having extensive discussions with Hundley about his performance enhancing substance use and about Radomski while they were teammates. Hundley's name, with two addresses and three telephone numbers, is listed in the address book seized by federal agents from Radomski's residence.

In order to provide Hundley with information about these allegations and to give him an opportunity to respond, I asked him to meet with me; he declined.

### ***Mark Carreon***

Mark Carreon played as an outfielder in Major League Baseball from 1987 to 1996, with the New York Mets, Detroit Tigers, San Francisco Giants, and Cleveland Indians.

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<sup>380</sup> In 1988, Hundley played on Mets minor league teams both in Little Falls and Port St. Lucie.

Radomski worked for the Mets when Carreon played for the club. Radomski said that he provided Carreon with Dianabol pills toward the end of his tenure with the Giants (Carreon was with San Francisco from 1994 through the middle of the 1996 season). He believes that Carreon paid by check. According to Radomski, Carreon told him that the “ball was jumping off his bat” and that he could hit farther because of the anabolic steroids he used.

In order to provide Carreon with information about these allegations and to give him an opportunity to respond, I asked him to meet with me. He did not respond to my request.

### *Hal Morris*

Hal Morris played as an infielder with four different teams in Major League Baseball from 1988 until 2000, the New York Yankees (2 seasons), Cincinnati Reds (10 seasons), Kansas City Royals (1 season), and Detroit Tigers (part of 1 season).

Radomski said that he sold Deca-Durabolin and testosterone to Morris in late 1999 when Morris was with the Reds. Morris paid by check.<sup>381</sup> Morris’s name, with an address we have confirmed was his, is listed in the address book seized by federal agents from Radomski’s residence.

In order to provide Morris with information about these allegations and to give him an opportunity to respond, I asked him to meet with me. By letter from his lawyer, Morris declined to meet with me. In that letter, Morris’s lawyer wrote that “Mr. Morris denies the use of anabolic steroids, testosterone and/or human growth hormone during his Major League career.” The letter did not deny that Morris had purchased those substances or had possession of them during his career.<sup>382</sup> In reply, on November 8, 2007, I wrote to Morris’s lawyer asking

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<sup>381</sup> Radomski was unable to produce this check; he could not obtain any checks dating from earlier than 2000.

<sup>382</sup> Letter from Jay K. Reisinger to Sen. George J. Mitchell, dated Nov. 5, 2007.

whether Morris also denied that he had purchased and possessed such substances, and whether or not he ever talked with Radomski.<sup>383</sup> In a letter he sent me in response, Morris's lawyer wrote:

It is our understanding that your investigation is focused on the use of performance enhancing substances during a player's Major League career. Those issues, as they pertain to Mr. Morris, have been addressed fully in my prior correspondence. In light of Mr. Morris' categorical denial with respect to your allegations, responses to the inquiries in your November 8, 2007 letter are unnecessary.<sup>384</sup>

***Matt Franco***

Matt Franco played as an infielder with three teams in Major League Baseball between 1995 and 2003, the New York Mets, Chicago Cubs, and Atlanta Braves.

Although Radomski stopped working for the Mets after the 1994 season, he continued to socialize with Mets players and personnel. Radomski said he met Franco when he played for the Mets and that he came to know Franco "very well." Radomski said that he sold Franco steroids on one occasion in 2000 after Franco called him to place the order. This call occurred, according to Radomski, after Radomski ran into Franco at an event.

Franco agreed to an interview by telephone with my investigative staff. During that interview, Franco denied ever purchasing or using any performance enhancing substance. Franco also denied that he ever met, knew, or talked with Radomski, asserting that he had never even heard of Radomski before the publicity over Radomski's guilty plea.

***Rondell White***

Rondell White is an outfielder who has played for seven teams in Major League Baseball from 1993 to the present, the Montreal Expos (8 seasons), Chicago Cubs (parts of

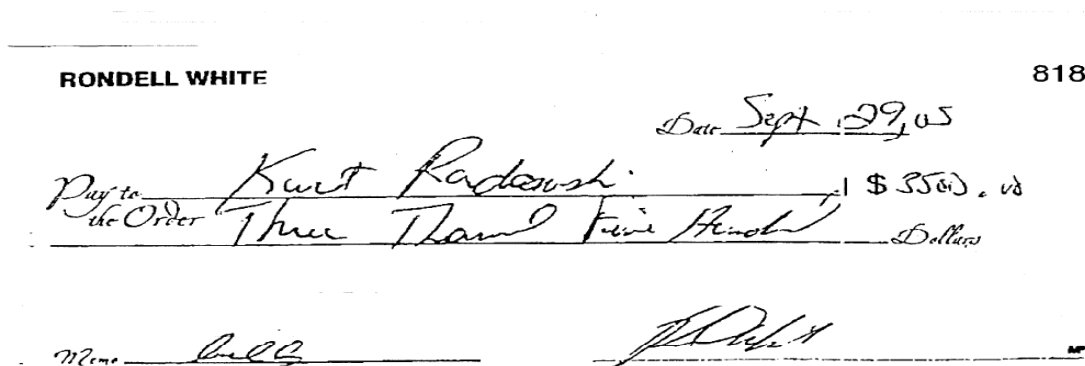
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<sup>383</sup> Letter from Sen. George J. Mitchell to Jay K. Reisinger, dated Nov. 8, 2007.

<sup>384</sup> Letter from Jay K. Reisinger to Sen. George J. Mitchell, dated Dec. 3, 2007.

2 seasons), New York Yankees (1 season), Kansas City Royals (part of 1 season), San Diego Padres (part of 1 season), Detroit Tigers (2 seasons), and Minnesota Twins (2 seasons).

According to Radomski, White started buying performance enhancing substances from him in 2000. White bought both human growth hormone and Deca-Durabolin. In our first interview, before he had access to all the checks his banks were able to supply, Radomski estimated he had engaged in “six to ten” transactions with White, some paid for with cash, others paid by check. Subsequently, Radomski was able to produce seven checks that he deposited drawn on White’s checking account. All are included in the Appendix. One is shown below.



Federal agents also seized from Radomski’s home a copy of a FedEx US Airbill reflecting a delivery to “R. White” on a date in 2005 that is otherwise illegible. White’s name, with an address and several telephone numbers, is listed in the address book seized by federal agents from Radomski’s residence.

Radomski noted that White often overpaid Radomski for the performance enhancing substances. Radomski either mailed the performance enhancing substances to White or delivered them to him in 2002 when White lived in New York.

Radomski recalled teaching White “a lot about steroids and HGH” and “walking him through the HGH injections for two hours on the phone one night.” White has had injury problems during his career (including four trips to the disabled list) and told Radomski that he needed performance enhancing substances to “stay on the field.”

In order to provide White with information about these allegations and to give him an opportunity to respond, I asked him to meet with me; he declined.

***Roger Clemens***

Roger Clemens is a pitcher who, from 1984 to 2007, played for four teams in Major League Baseball, the Boston Red Sox (13 seasons), Toronto Blue Jays (2 seasons), New York Yankees (6 seasons), and Houston Astros (3 seasons). He has won more than 350 games, seven Cy Young Awards, and was the American League Most Valuable Player in 1986. He was named to All-Star teams eleven times.

During the Radomski investigation, federal law enforcement officials identified Brian McNamee as one of Radomski’s customers and a possible sub-distributor. McNamee, through his attorney, entered into a written agreement with the U.S. Attorney’s Office for the Northern District of California. The agreement provides that McNamee will cooperate with the U.S. Attorney’s Office. No truthful statements can be used against McNamee in any federal prosecution by that Office; if, however, he should be untruthful in any statements made pursuant to that agreement, he may be charged with criminal violations, including making false statements, which is a felony.

As part of his cooperation with the U.S. Attorney’s Office, and at its request, McNamee agreed to three interviews by me and my staff, one in person and two by telephone. McNamee’s personal lawyer participated in the interviews. Also participating were federal prosecutors and agents from the F.B.I. and the Internal Revenue Service. On each occasion,

McNamee was advised that he could face criminal charges if he made any false statements during these interviews, which were deemed by the prosecutors to be subject to his written agreement with the U.S. Attorney's Office.

McNamee attended St. John's University in New York from 1985 to 1989, majoring in athletic administration. At St. John's, he played baseball. From 1990 to May 1993, he was a New York City police officer.

In 1993, McNamee met Tim McCleary, the assistant general manager of the New York Yankees, who also had attended St. John's. McCleary hired McNamee as a bullpen catcher and batting practice pitcher for the New York Yankees. In 1995, McNamee was released from his duties after Joe Torre was named the new Yankees manager. From 1995 to 1998, McNamee trained "Olympic caliber athletes" outside of baseball.

In 1995, McCleary was hired as the assistant general manager for the Toronto Blue Jays. In 1998, that club hired McNamee as its strength and conditioning coach, and he served in that position from 1998 to 2000.

Roger Clemens signed with Toronto in 1997, after spending the first thirteen years of his career with the Red Sox. After McNamee began working for the Blue Jays in 1998, he and Clemens both lived at the Toronto SkyDome (there is a hotel attached to the stadium). McNamee and Clemens became close professionally while in Toronto, but they were not close socially or personally.

Jose Canseco was playing for the Blue Jays in 1998. On or about June 8-10, 1998, the Toronto Blue Jays played an away series with the Florida Marlins. McNamee attended a lunch party that Canseco hosted at his home in Miami. McNamee stated that, during this luncheon, he observed Clemens, Canseco, and another person he did not know meeting inside



Canseco's house, although McNamee did not personally attend that meeting. Canseco told members of my investigative staff that he had numerous conversations with Clemens about the benefits of Deca-Durabolin and Winstrol and how to "cycle" and "stack" steroids. Canseco has made similar statements publicly.<sup>385</sup>

Toward the end of the road trip which included the Marlins series, or shortly after the Blue Jays returned home to Toronto, Clemens approached McNamee and, for the first time, brought up the subject of using steroids. Clemens said that he was not able to inject himself, and he asked for McNamee's help.

Later that summer, Clemens asked McNamee to inject him with Winstrol, which Clemens supplied. McNamee knew the substance was Winstrol because the vials Clemens gave him were so labeled. McNamee injected Clemens approximately four times in the buttocks over a several-week period with needles that Clemens provided. Each incident took place in Clemens's apartment at the SkyDome. McNamee never asked Clemens where he obtained the steroids.

During the 1998 season (around the time of the injections), Clemens showed McNamee a white bottle of Anadrol-50.<sup>386</sup> Clemens told McNamee he was not using it but wanted to know more about it. McNamee told Clemens not to use it. McNamee said he took the

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<sup>385</sup> Jose Canseco, *Juiced: Wild Times, Rampant 'Roids, Smash Hits and How Baseball Got Big* 211-13 (Regan Books 2005).

<sup>386</sup> Anadrol 50 is the brand name for oxymetholone and, according to a reference book targeted at steroid abusers, "is considered by many to be the most powerful steroid commercially available." See William Llewellyn, *Anabolics 2006* 99 (5th ed. 2006). It can harm the liver and produce pronounced androgenic side effects. *Id.* at 100.

bottle and gave it to Canseco.<sup>387</sup> McNamee does not know where Clemens obtained the Anadrol-50.

According to McNamee, from the time that McNamee injected Clemens with Winstrol through the end of the 1998 season, Clemens's performance showed remarkable improvement. During this period of improved performance, Clemens told McNamee that the steroids "had a pretty good effect" on him. McNamee said that Clemens also was training harder and dieting better during this time.

In 1999, Clemens was traded to the New York Yankees. McNamee remained under contract with the Blue Jays for the 1999 season. In 2000, the Yankees hired McNamee as the assistant strength and conditioning coach under Jeff Mangold. According to McNamee, the Yankees hired him because Clemens persuaded them to do so. In this capacity, McNamee worked with all of the Yankees players. McNamee was paid both by the Yankees and by Clemens personally. Clemens hired McNamee to train him during portions of several weeks in the off-season. McNamee also trained Clemens personally for one to two weeks during spring training and a few times during the season. McNamee served as the Yankees' assistant strength and conditioning coach through the 2001 season.<sup>388</sup>

McNamee first learned about Kirk Radomski through David Segui during the 2000 season. Also that season, McNamee obtained Radomski's telephone number from Jason Grimsley. McNamee wanted to buy a Lexus, and Radomski had a connection with a Lexus dealer. Radomski recalled that Grimsley was a frequent customer for performance enhancing

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<sup>387</sup> McNamee stated that he showed the bottle to Canseco because he thought that Canseco was knowledgeable and he felt comfortable approaching him. According to McNamee, Canseco volunteered to take the bottle.

<sup>388</sup> In his own interview, Mangold was reluctant to discuss McNamee in any respect. Mangold said that he was not aware of, and never suspected, any player of using performance enhancing substances.

substances, and he produced nine checks written by Grimsley to Radomski during 2001 and 2002 and fourteen checks in total.

According to McNamee, during the middle of the 2000 season Clemens made it clear that he was ready to use steroids again. During the latter part of the regular season, McNamee injected Clemens in the buttocks four to six times with testosterone from a bottle labeled either Sustanon 250 or Deca-Durabolin that McNamee had obtained from Radomski.

McNamee stated that during this same time period he also injected Clemens four to six times with human growth hormone he received from Radomski, after explaining to Clemens the potential benefits and risks of use. McNamee believed that it was probably his idea that Clemens try human growth hormone. Radomski instructed McNamee how to inject human growth hormone. On each occasion, McNamee administered the injections at Clemens's apartment in New York City.

McNamee said that he and Clemens did not have any conversations regarding performance enhancing substances from late 2000 until August 2001. McNamee did, however, train Clemens and Andy Pettitte during the off-season at their homes in Houston. Clemens often invited other major league players who lived in the Houston area to train with him.

McNamee's training relationship with Clemens and others has been described publicly. Peter Gammons reported during spring training 2001:

Brandon Smith, an apprentice trainer with the Yankees, describes Roger Clemens' day as follows: "He's one of the first players in every morning, runs, does his program with Andy Pettitte, does the team program workout, goes to the weight room, leaves, plays 18 holes of golf and finally meets (trainer) Brian McNamee at 6 . . . and a few other players – for another workout. It's incredible how much energy Roger has."<sup>389</sup>

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<sup>389</sup> Peter Gammons, *Indians Expecting Better Year*, espn.com, Mar. 11, 2001; see also Gary Graves, *Clemens on Fire with Desire; Rigorous Workouts Keep 38-year-old All-Star Sharp, In Shape*, USA Today, July 10, 2001, at C3.

According to McNamee, Clemens advised him in August 2001 that he was again ready to use steroids. Shortly thereafter, McNamee injected Clemens with Sustanon or Deca-Durabolin on four to five occasions at Clemens's apartment. According to McNamee, he again obtained these drugs from Kirk Radomski. McNamee concluded from Clemens's statements and conduct that Clemens did not like using human growth hormone (Clemens told him that he did not like the "bellybutton shot"). To McNamee's knowledge, Clemens did not use human growth hormone in 2001.

McNamee was not retained by the Yankees after the 2001 season. After that season, Clemens never again asked McNamee to inject him with performance enhancing substances, and McNamee had no further discussions with Clemens about such substances. McNamee stated that Clemens did not tell him why he stopped asking him to administer performance enhancing substances, and McNamee has no knowledge about whether Clemens used performance enhancing substances after 2001.

During the years that McNamee stated he facilitated Clemens's use of steroids and human growth hormone, McNamee's discussions with Clemens about use of these drugs were limited. McNamee assumed that Clemens used performance enhancing substances during the second half of the season so that he would not tire, but they did not discuss this directly. It was Clemens who made the decision when he would use anabolic steroids or human growth hormone. McNamee stated that he tried to educate Clemens about these substances; he "gave him as much information as possible."

Clemens continued to train with McNamee after he was dismissed by the Yankees, according to both McNamee and press reports. In October 2006, after the Los Angeles Times reported that the names of Clemens and McNamee were among those that had been

redacted from an affidavit in support of a search warrant for the residence of Jason Grimsley as allegedly involved with the illegal use of performance enhancing substances, Clemens was reported to have said: “I’ll continue to use Mac [McNamee] to train me. He’s one of a kind.”<sup>390</sup>

McNamee was quoted in a December 10, 2006 news article on steroids as reportedly having said: “I never, ever gave Clemens or Pettitte steroids. They never asked me for steroids. The only thing they asked me for were vitamins.”<sup>391</sup> McNamee told us that he was accurately quoted but that he did not tell the truth to the reporter who interviewed him. He explained that he was trying to protect his reputation.

On May 15, 2007, the New York Daily News reported that Clemens had cut ties to McNamee.<sup>392</sup> McNamee denied that and told us that he trained Clemens after the article was published. He added that Clemens now has a home in the New York area, and McNamee personally installed a gym there.

McNamee stated that he has no ill will toward Clemens and “was always ahead [financially] with Roger.” McNamee received money for expenses from Clemens’s business representatives. They paid McNamee for training Clemens, and for his expenses. From time to time Clemens also gave McNamee “extra money.” Clemens never gave money to McNamee specifically to buy performance enhancing substances.

Kirk Radomski recalled meeting McNamee through David Segui. Radomski confirmed that he supplied McNamee with human growth hormone and anabolic steroids from

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<sup>390</sup> Jack Curry, *Cloud Over Clemens’s Finale: He and Pettitte Deny Report*, N.Y. Times, Oct. 2, 2006, at D1; Lance Pugmire, *The Nation*; *Clemens Is Named in Drug Affidavit*, L.A. Times, Oct. 1, 2006, at A1.

<sup>391</sup> See William Sherman and T.J. Quinn, *Andy Totes Baggage to Bronx*, N.Y. Daily News, Dec. 10, 2006, at 56. McNamee’s interactions with Pettitte are discussed below.

<sup>392</sup> Christian Red with T.J. Quinn, *Roger Seeking Workout Help*, N.Y. Daily News, May 15, 2007.

2000 to 2004. Although McNamee never told Radomski the performance enhancing substances obtained were for anything other than McNamee's personal use, Radomski concluded that McNamee was distributing the substances to others based on the amounts he purchased and the timing of the purchases.

Radomski knew McNamee was acting as personal trainer for Roger Clemens, Andy Pettitte, and Chuck Knoblauch (among others), and he suspected McNamee was giving the performance enhancing substances to some of his clients. Occasionally, McNamee acknowledged good performances by Knoblauch or Clemens by "dropping hints," such as "[h]e's on the program now." McNamee never explicitly told Radomski that either Clemens or Pettitte was using steroids or human growth hormone. According to Radomski, however, McNamee asked Radomski what types of substances Radomski was providing to pitchers.

Radomski delivered the substances to McNamee personally. Radomski recalled numerous performance enhancing substance transactions with McNamee. Radomski also sometimes trained some of McNamee's non-professional athlete clients.

Radomski produced four checks from McNamee that were deposited into Radomski's checking account and drawn on McNamee's checking account.<sup>393</sup> All the checks were dated in 2003 and 2004, after McNamee said that he supplied Clemens, Pettitte, and Knoblauch. McNamee said these purchases were for non-baseball clients.

McNamee's name, with an address and telephone number, is listed in the address book seized from Radomski's residence by federal agents. Radomski's telephone records show twelve calls to McNamee's telephone number from May through August 2004. Radomski was

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<sup>393</sup> One of the checks, in the amount of \$2,400, includes a memo stating "Loan Repay Sub." Radomski confirmed that he never loaned McNamee any money and that the check had been for one-and-a-half kits of human growth hormone.

unable to obtain telephone records dating back to the time when, according to McNamee, McNamee was injecting Clemens.

Clemens appears to be one of the two people associated with baseball – Andy Pettitte is the other – who have remained loyal to McNamee after he left the Yankees.<sup>394</sup>

Clemens has remained a source of income for McNamee up to and including 2007.

Prior to my interviews of McNamee he was interviewed by federal officials on several occasions, during each of which they informed McNamee that he risked criminal prosecution if he was not truthful. I was advised by those officials that on each occasion he told them about the performance enhancing substance use of Clemens, Andy Pettitte, and Chuck Knoblauch (Pettitte and Knoblauch are discussed below).

In order to provide Clemens with information about these allegations and to give him an opportunity to respond, I asked him to meet with me; he declined.

### *Andy Pettitte*

Andy Pettitte is a pitcher who since 1995 has played with two teams in Major League Baseball, the New York Yankees (10 seasons) and the Houston Astros (3 seasons). He has been named to the All-Star team twice and was Most Valuable Player in the 2001 American League Championship Series.

McNamee began serving as Pettitte's personal trainer and started assisting Pettitte in off-season workouts after the 1999 season. According to McNamee, during the 2001-02 off-season, Pettitte asked him about human growth hormone. McNamee said that he discouraged Pettitte from using human growth hormone at that time.

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<sup>394</sup> Ben Bolch, *Clemens, Pettitte Deny Use of Drugs*, L.A. Times, Oct. 2, 2006, at D1.

From April 21 to June 14, 2002, Pettitte was on the disabled list with elbow tendonitis.<sup>395</sup> McNamee said that Pettitte called him while Pettitte was rehabilitating his elbow in Tampa, where the Yankees have a facility, and asked again about human growth hormone. Pettitte stated that he wanted to speed his recovery and help his team.

McNamee traveled to Tampa at Pettitte's request and spent about ten days assisting Pettitte with his rehabilitation. McNamee recalled that he injected Pettitte with human growth hormone that McNamee obtained from Radomski on two to four occasions. Pettitte paid McNamee for the trip and his expenses; there was no separate payment for the human growth hormone.

According to McNamee, around the time in 2003 that the BALCO searches became public, Pettitte asked what he should say if a reporter asked Pettitte whether he ever used performance enhancing substances. McNamee told him he was free to say what he wanted, but that he should not go out of his way to bring it up. McNamee also asked Pettitte not to mention his name. McNamee never discussed these substances with Pettitte again.

After the 2001 season, Pettitte, like Clemens, continued to use McNamee's services and to serve as a source of income after McNamee was dismissed by the Yankees. In a 2006 article, Pettitte "acknowledged an ongoing relationship" with McNamee. Pettitte was quoted as having said that he still talked to McNamee about once a week. "Mac has trained me professionally for a long time, and I'll continue to use Mac," Pettitte said.<sup>396</sup>

In order to provide Pettitte with information about these allegations and to give him an opportunity to respond, I asked him to meet with me; he declined.

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<sup>395</sup> See Jack Curry, *Pettitte Relieved to Have Tendonitis*, N.Y. Times, May 1, 2002, at D3.

<sup>396</sup> Ben Bolch, *Clemens, Pettitte Deny Use of Drugs*, L.A. Times, Oct. 2, 2006, at D1.



### ***Chuck Knoblauch***

Chuck Knoblauch played as an infielder for three teams in Major League Baseball from 1991 to 2002, the Minnesota Twins (7 seasons), New York Yankees (4 seasons), and Kansas City Royals (1 season). He was the 1991 American League Rookie of the Year and played on four All-Star teams.

Knoblauch played for the Yankees during 2000 and 2001, the two years when McNamee served as the Yankees' assistant strength coach. McNamee provided personal training services to Knoblauch.

McNamee said that he acquired human growth hormone from Radomski for Knoblauch in 2001. Beginning during spring training and continuing through the early portion of the season, McNamee injected Knoblauch at least seven to nine times with human growth hormone.

Knoblauch paid Radomski through Jason Grimsley and, once or twice, through McNamee. (Radomski produced two checks from Grimsley in 2001 that totaled \$5,550.) According to Radomski, McNamee suggested to him that McNamee was obtaining human growth hormone on Knoblauch's behalf. According to McNamee, on occasion Knoblauch also procured his own supply of human growth hormone. McNamee believed that Knoblauch's other source was Jason Grimsley.

In order to provide Knoblauch with information about these allegations and to give him an opportunity to respond, I asked him to meet with me; he did not respond to my request.

### ***Jason Grimsley***

Jason Grimsley pitched for seven different teams in Major League Baseball between 1989 and 2006, the Philadelphia Phillies (3 seasons), Cleveland Indians (3 seasons),

California Angels (1 season), New York Yankees (2 seasons), Kansas City Royals (4 seasons), Baltimore Orioles (2 seasons), and Arizona Diamondbacks (1 season). As previously discussed, he was released by the Diamondbacks after it was publicly revealed that a federal search warrant had been executed upon his residence in 2006.<sup>397</sup>

Kirk Radomski remembered meeting Jason Grimsley in 2000 when Grimsley was pitching for the Yankees. In our first interview, conducted before Radomski obtained complete records from his banks, Radomski estimated he had engaged in at least seven or eight sales to Grimsley involving human growth hormone, Deca-Durabolin, and diet pills from 2000 through 2003. Radomski ultimately produced fourteen checks written by Grimsley (including cashier's checks for which Grimsley was the remitter) from June 2, 2001 through July 29, 2005, totaling \$35,400. All are included in the Appendix. One is shown below.

**JASON GRIMSLEY**


2439

DATE 9/25/04

**P A Y**  
TO THE ORDER OF KIRK RADOMSKI \$ 3200.00

THREE THOUSAND TWO HUNDRED AND NO/100 DOLLARS

MEMO \_\_\_\_\_



Grimsley's name, with several addresses and telephone numbers, is listed in the address book that was seized from Radomski's residence by federal agents.

<sup>397</sup> Associated Press, *Around the Majors; Feds Search Grimsley's Residence*, L.A. Times, June 7, 2006, at D4; *see supra* at 106-08.

Brian McNamee stated that in 2000, while he was catching in the Yankee bullpen, Grimsley showed him a white bottle he said he had received from a pharmacist in Seattle. Grimsley said the substance was “Winni 5,” which McNamee understood to be Winstrol tablets at 5 milligram dosage. McNamee advised Grimsley that steroids, taken orally, could be toxic.

As previously discussed, on June 6, 2006 federal agents executed a search warrant at Grimsley’s home in Scottsdale, Arizona.<sup>398</sup> The warrant was obtained after Grimsley decided to stop cooperating with federal agents; before that decision, Grimsley had been interviewed by the agents for two hours and reportedly admitted using steroids, human growth hormone, and clenbuterol over an extended period during his career in Major League Baseball.<sup>399</sup> Among other things, Grimsley cited his use of the anabolic steroid Deca-Durabolin, saying he used it to recover from shoulder surgery in 2000.

In order to provide Grimsley with information about these allegations and to give him an opportunity to respond, I asked him to meet with me; he declined.

***Gregg Zaun***

Gregg Zaun is a catcher who has played with seven teams in Major League Baseball since 1995, the Baltimore Orioles (parts of 2 seasons), Florida Marlins (parts of 3 seasons), Texas Rangers (1 season), Kansas City Royals (2 seasons), Houston Astros (parts of 2 seasons), Colorado Rockies (part of 1 season) and, most recently, the Toronto Blue Jays (4 seasons).

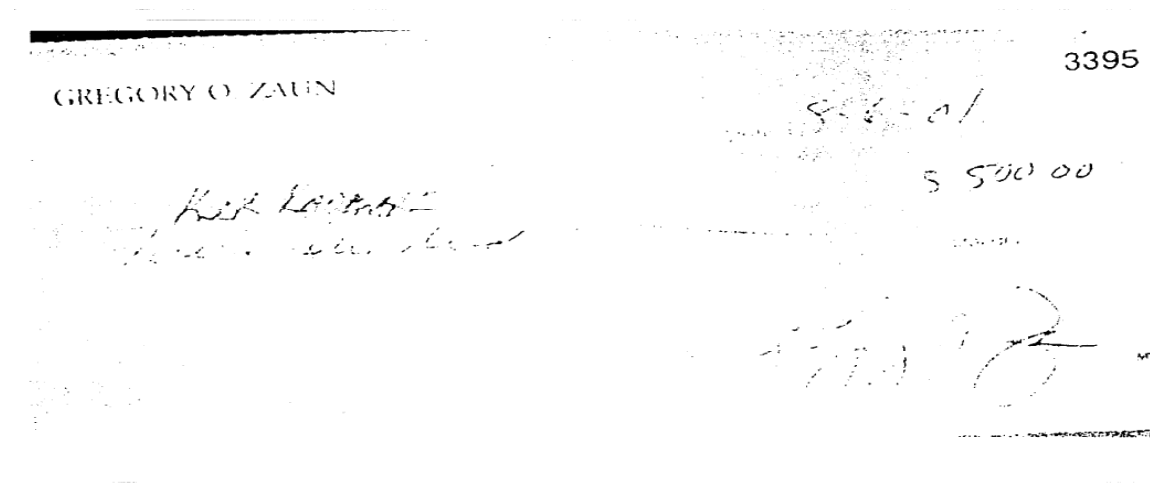
Radomski believed that Jason Grimsley referred Zaun to him when they both played for the Royals in 2001. Someone else (Radomski could not remember who) called and

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<sup>398</sup> *See supra* at 106-08.

<sup>399</sup> Redacted Affidavit of I.R.S. Special Agent Jeff Novitzky, sworn to on May 31, 2006, at ¶ 16.

ordered steroids for Zaun. Although Radomski never spoke to Zaun about the transaction, Radomski received a check from Zaun for the steroids. Radomski produced that check, a copy of which is included in the Appendix and is shown below.



Radomski confirmed the payment was for Deca-Durabolin and Winstrol. He also stated that he sent the drugs to Zaun at the Kansas City Royals clubhouse. The address for the Royals ballpark was found in Radomski's address book.

Radomski's statement that he sold steroids to Zaun is not the only allegation of use by Zaun. As discussed earlier in this report, in September 2002 Luis Perez, a bullpen catcher for the Montreal Expos, was arrested for possession of a pound of marijuana. In January 2003, he was interviewed by investigators from the Commissioner's Office.<sup>400</sup> Perez told those investigators that he had personally supplied anabolic steroids to Zaun and seven other major league ball players.

Tony Muser, Kansas City's former manager, recounted an incident in which Zaun denied steroid use. According to Muser, while he was managing the Royals he once discussed the dangers of performance enhancing substance use with Zaun while the two were sitting on the

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<sup>400</sup> See *supra* at 99-101.

bench before a game. Specifically, Muser told Zaun the story of how Don Rowe, a pitching coach for Muser in the minor leagues, had used steroids and developed serious health problems as a consequence. Muser explained to Zaun that he was not accusing him of steroid use, and Zaun denied any such use.

In order to provide Zaun with information about these allegations and to give him an opportunity to respond, I asked him to meet with me; he declined.

### ***David Justice***

David Justice played as an outfielder for four teams in Major League Baseball from 1989 to 2002, the Atlanta Braves (8 seasons), Cleveland Indians (4 seasons), New York Yankees (2 seasons), and Oakland Athletics (1 season). He was the Rookie of the Year in the National League in 1990 and was the Most Valuable Player in the American League Championship Series in 2000. He was named to three All-Star teams.

Radomski said he made one sale to Justice, which occurred after the 2000 World Series. Justice played for the Yankees that year. Justice paid Radomski by check for two or three kits of human growth hormone. Radomski said that he cashed this check.

Brian McNamee recalled that Justice asked him about human growth hormone in 2000 or 2001, while McNamee and Justice were both with the Yankees. According to McNamee, Justice admitted in this conversation that he had obtained human growth hormone from Radomski.

We interviewed David Justice before we had knowledge of the Radomski and McNamee allegations. Justice denied using performance enhancing substances himself, but he provided the names of many players who, he suspected, had used steroids. He emphasized, however, that he did not have direct knowledge of any use by these players. He stated that he had had “thousands” of conversations about possible steroid use in baseball.

Justice said that the Commissioner's Office and the major league clubs did nothing during his career to discourage players from using steroids. He said that during his career he was never in a meeting where the players were told "you can't take steroids" and that "in my fourteen years there was never a mention of steroids" in any presentation given by any club, the Commissioner's Office, or the Players Association. Justice said that he had never been warned of the side effects or consequences of steroid use and had never been told that steroids were a banned substance.

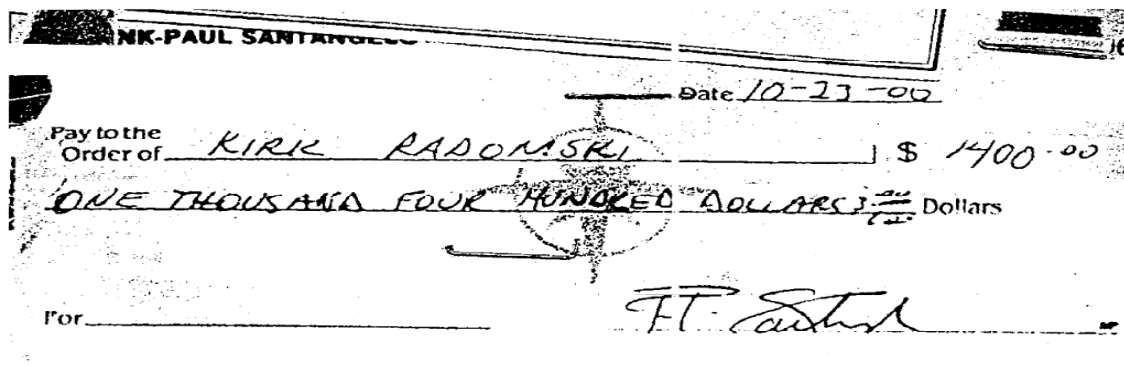
After we learned of the statements made by Radomski and McNamee about Justice, in order to provide Justice with information about these allegations and to give him an opportunity to respond, I asked him to meet with me. He did not respond.

***F.P. Santangelo***

F.P. Santangelo played several positions over short stints with four teams in Major League Baseball between 1995 and 2001, the Montreal Expos, San Francisco Giants, Los Angeles Dodgers, and Oakland Athletics. He is now a radio broadcaster.

Radomski believed that Santangelo was referred to him by David Segui when both played for the Expos between 1995 and 1997. Radomski produced one check from Santangelo dated October 23, 2000 in the amount of \$1,400, which Radomski said was payment for a kit of human growth hormone. A copy of that check is included in the Appendix and is

shown below.



Radomski also recalled selling Deca-Durabolin and testosterone to Santangelo once or twice during 2001 when Santangelo was with the Oakland Athletics. Radomski believed that Santangelo paid by check. Santangelo's name, with an address and two telephone numbers, is listed in the address book seized from Radomski's residence by federal agents.

Adam Piatt is a former major leaguer who was interviewed during this investigation. Piatt and Santangelo played together at Oakland's class AAA affiliate in Sacramento during the 2002 season. Santangelo provided Piatt with Radomski's name and cell phone number in response to an inquiry by Piatt as to where he could get performance enhancing substances. Santangelo told Piatt that Radomski "will get you what you need."

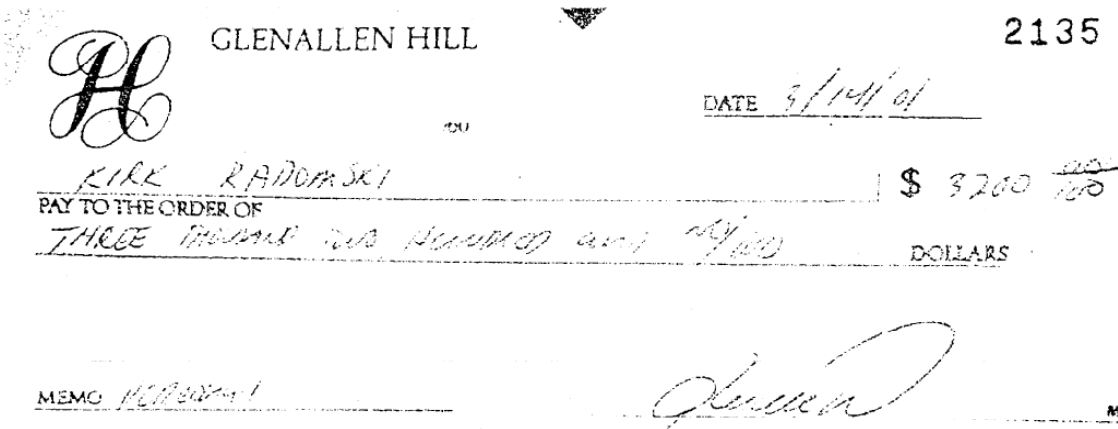
In order to provide Santangelo with information about these allegations and to give him an opportunity to respond, I asked him to meet with me; he declined.

### ***Glenallen Hill***

Glenallen Hill played as an outfielder with seven teams in Major League Baseball between 1989 and 2001, the Toronto Blue Jays, Cleveland Indians, Chicago Cubs, San Francisco Giants, Seattle Mariners, New York Yankees, and Anaheim Angels. In 2007, he was the first base coach for the Colorado Rockies.

Radomski recalled meeting Hill at a social function in 2000 when Hill was still playing in Major League Baseball. Radomski said that Hill told him that he was getting human growth hormone in San Francisco and was “not feeling anything.” Radomski thereafter sent Hill a “sample bottle” of human growth hormone without charge and told him to try it. Hill tried it and told Radomski that he “felt everything you told me I would feel.” Radomski told Hill the human growth hormone Hill had been taking likely had spoiled. Hill purchased two kits of human growth hormone from Radomski.

Radomski produced one check from Hill, dated March 14, 2001, in the amount of \$3,200, his typical price for two kits of human growth hormone. A copy of that check is included in the Appendix and is shown below.



Hill’s name, with an address and telephone number, is listed in the address book seized from Radomski’s residence by federal agents.

As a current club employee, Hill was required by the Commissioner to attend an interview for this investigation. Hill’s recollection of his purchases of performance enhancing substances differed from Radomski’s account. Hill said he was given Radomski’s contact



information from a player Hill identified only as “David.” Hill also said he met this player during the 1998 season. Hill said that “David” admitted using steroids and was knowledgeable about its effects and the different types of anabolic steroids.

In late 2000, Hill contacted “David” and was given Radomski’s contact information. According to Hill, he had approximately five telephone conversations with Radomski about the use and effects of steroids. Hill recalled that Radomski sold him Sustanon. Hill believed he paid him by check in either late 2000 or early 2001. According to Hill, he never used the anabolic steroids that he bought from Radomski.

When asked why he ordered and paid for steroids but did not use them, Hill said he was suffering from “marital stress” at the time. According to Hill, this was the only reason that he elected not to use the steroids he bought. Hill said the anabolic steroids unknowingly remained in his possession until spring training 2007 when, during the course of unpacking from a move, he discovered them. Hill insisted that this was the only time he purchased any performance enhancing substance and that he has never used any performance enhancing substance.

Hill said that, while he had between five and fifteen conversations during his playing career with players about performance enhancing substances, he could not remember the names of any of the players with whom he had discussed the subject. Hill said that “David” was the only individual who ever admitted to him that he used performance enhancing substances.

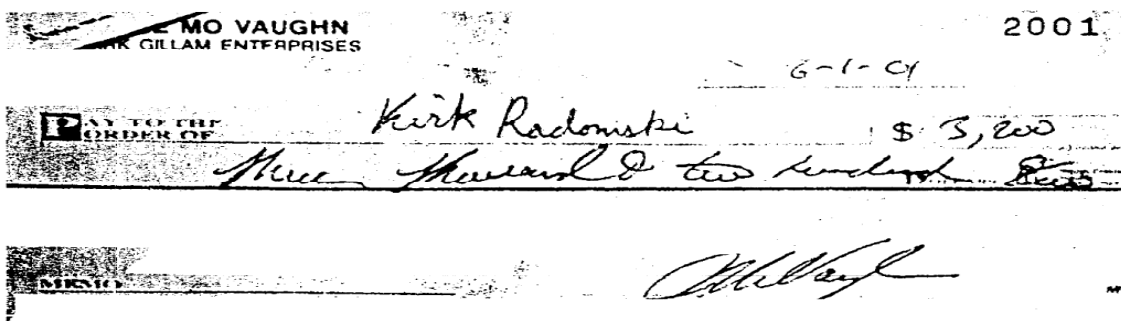
With his personal lawyer present, Hill said his lawyers have told him that disclosing the identities of players who used performance enhancing substances would harm his career in Major League Baseball. Hill said his lawyers are the only persons who have told him that “nam[ing] names” could harm his career prospects.

***Mo Vaughn***

Mo Vaughn played as an infielder and designated hitter with three teams in Major League Baseball between 1991 and 2003, the Boston Red Sox (8 seasons), Anaheim Angels (2 seasons), and New York Mets (2 seasons). While with the Red Sox in 1995, he was voted the American League Most Valuable Player. He played in three All-Star games.

Radomski said that Glenallen Hill referred Vaughn to him. A former major league player has confirmed that Hill and Vaughn had a conversation in early 2001 in which Radomski's name was mentioned. Radomski recalled that Vaughn had an ankle injury and called him for advice.<sup>401</sup> Radomski told Vaughn that human growth hormone would help his ankle heal faster.

Radomski said that thereafter he sold human growth hormone to Vaughn. Radomski also provided Vaughn with a program for the use of the human growth hormone. Radomski said that he delivered the substances to Vaughn personally. Radomski produced three checks deposited into Radomski's accounts and drawn on Vaughn's checking account: two checks for \$3,200 each, and one check for \$2,200. All of the checks are included in the Appendix. One is shown below.



<sup>401</sup> Vaughn did not play for the entire 2001 season because of that injury. See Murray Chass, *Baseball: Mets Land Vaughn with a Twist and a Tug*, N.Y. Times, Dec. 28, 2001, at S1.

Radomski said that the two checks in the amount of \$3,200 were each for two kits of human growth hormone. He stated that the check in the amount of \$2,200 might have been for one-and-a-half kits of human growth hormone. Radomski said that he did not sell Vaughn steroids because Vaughn was “afraid of the big needles.”

Radomski could not explain why Vaughn was buying human growth hormone twice within an eighteen-day span (two of the checks are dated June 1 and June 19, 2001, respectively), but he thought that Vaughn either left his performance enhancing substances behind when he traveled or allowed the earlier shipment to spoil. Radomski also said that on many occasions he received payments well after supplying the drugs.

Vaughn’s name, with an address and telephone number, is listed in the address book seized from Radomski’s residence by federal agents.

In order to provide Vaughn with information about these allegations and to give him an opportunity to respond, I asked him to meet with me; he never agreed to an interview.

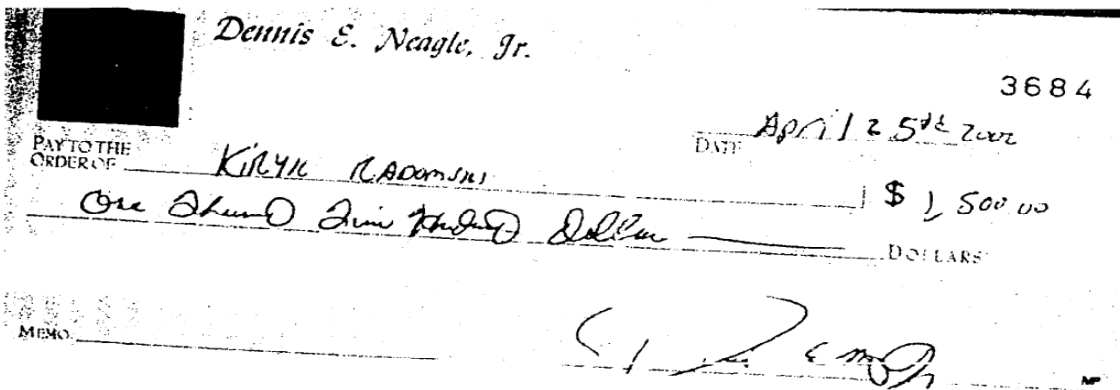
### *Denny Neagle*

Denny Neagle pitched for six teams in Major League Baseball between 1991 and 2003, the Minnesota Twins (1 season), Pittsburgh Pirates (5 seasons), Atlanta Braves (3 seasons), Cincinnati Reds (2 seasons), New York Yankees (part of 1 season), and Colorado Rockies (3 seasons). He has played on two All-Star teams.

Radomski said he met Neagle at a club in New York City in 2000 when Neagle played for the Yankees. After they met, Neagle called Radomski “looking for HGH.” Neagle seemed familiar with human growth hormone. Radomski said that from 2000 to 2004 he engaged in five or six transactions with Neagle involving human growth hormone and anabolic steroids. Neagle always paid by check. At one point, Neagle had another major league player

send a check to Radomski because that player owed Neagle money. Radomski stated that he never sold human growth hormone or steroids to the other player.

In addition to the other player's check, Radomski produced copies of eight checks from or on behalf of Neagle. All are included in the Appendix. One is shown below.



Radomski also produced a check from Dan McGinn, Baseball Account, Coors Field, 2001 Blake St., Denver, Colorado 80205, in the amount of \$1,600. The memo line on the check says "Neagle." At the time, McGinn was a clubhouse attendant with the Colorado Rockies. Radomski said that the check was in payment for performance enhancing substances purchased from him by Neagle. McGinn is no longer employed by the Rockies and did not respond to our requests for an interview.

Neagle's name, with the address "Col. Rockies Clubhouse" and several telephone numbers, is listed in the address book that was seized from Radomski's home by federal agents.

In order to provide Neagle with information about these allegations and to give him an opportunity to respond, I asked him to meet with me. He did not respond to my request.

### ***Ron Villone***

Ron Villone has been a pitcher with ten teams in Major League Baseball since 1995, the Seattle Mariners, San Diego Padres, Milwaukee Brewers, Cleveland Indians,

Cincinnati Reds, Colorado Rockies, Houston Astros, Pittsburgh Pirates, Florida Marlins, and New York Yankees.

Radomski recalled that he was referred to Villone by Denny Neagle. Both Neagle and Villone played for the Colorado Rockies in 2001. Radomski said that from 2004 to 2005, he made three sales to Villone, each for two kits of human growth hormone. Radomski often recommended that his customers purchase two kits in a single order.

Villone first purchased human growth hormone from Radomski during the 2004 season. Radomski sent this order to Villone at the Seattle Mariners' clubhouse. For the second transaction, Radomski met Villone during the 2004-05 off-season at a diner where Radomski personally delivered the human growth hormone to him. Villone's third purchase from Radomski took place during the 2005 season. Radomski sent that package to Villone's residence in Seattle.

Radomski charged Villone \$3,200 for each of these three transactions. Villone paid Radomski in cash each time. On two occasions, Villone mailed Radomski a Mariners' yearbook in which he had placed cash inside the pages of the book. On the one occasion when Radomski delivered the human growth hormone to Villone in person, Villone handed him the cash.

In mid-June 2006, Villone called Radomski and inquired about obtaining more human growth hormone. This phone call occurred after the federal search warrant had been executed on his home. Radomski informed Villone that he "was dry" and did not have anything to sell to him.

Villone's name, with an address and telephone number, is listed in the address book seized from Radomski's residence by federal agents.

In order to provide Villone with information about these allegations and to give him an opportunity to respond, I asked him to meet with me; he declined.

***Ryan Franklin***

Ryan Franklin is a pitcher who has played with four teams in Major League Baseball since 1999, the Seattle Mariners, Philadelphia Phillies, Cincinnati Reds, and St. Louis Cardinals.

Radomski said that Ron Villone referred Franklin to him. Villone and Franklin were teammates in 2004 with the Seattle Mariners. Villone called Radomski and told him to send Anavar and Deca-Durabolin to Franklin, and Radomski did so.

On August 2, 2005, Ryan Franklin was suspended for ten games for a positive test for anabolic steroids that was conducted in May 2005.<sup>402</sup> Upon the announcement of Franklin's suspension, he is reported to have said he had no idea how he tested positive.<sup>403</sup> Franklin added:

There has to be a flaw in the system. I have no clue. I tested in [early] May and again three weeks later. The first was positive, the second was negative. There is a flaw in the testing or my urine got mixed up with somebody else's. They said that couldn't happen but I don't believe it. I just know deep in my heart that I'd never do anything like that.<sup>404</sup>

In order to provide Franklin with information about these allegations and to give him an opportunity to respond, I asked him to meet with me; he declined.

***Chris Donnels***

Chris Donnels played parts of eight seasons as an infielder with five teams in Major League Baseball between 1991 and 2002, the New York Mets, Houston Astros, Boston Red Sox, Los Angeles Dodgers, and Arizona Diamondbacks.

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<sup>402</sup> See Lee Jenkins, *Palmeiro Case Centers on Popular Drug*, N.Y. Times, Aug. 3, 2005, at D1.

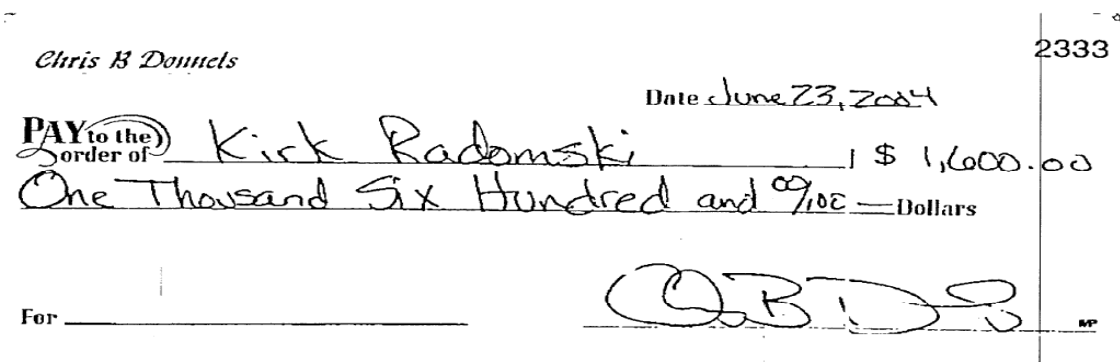
<sup>403</sup> Jim Street, *Franklin Suspended for 10 Days*, mlb.com, Aug. 2, 2005.

<sup>404</sup> *Id.*

Radomski met Donnels while they were both with the Mets in 1991 and 1992.

Radomski sold both human growth hormone and steroids to Donnels from 2000 to 2004.

Radomski produced eight checks and money orders from Donnels. The earliest was dated November 29, 2001 and the latest June 23, 2004; they totaled \$9,950. The amounts of these checks and money orders varied because, according to Radomski, Donnels paid him “whenever he got money.” All are included in the Appendix. One is shown below.



Donnels’s name, with an address and several telephone numbers, is listed in the address book seized from Radomski’s residence by federal agents.

Donnels agreed to speak with members of my investigative staff. He said that he had been expecting to hear from us. Donnels said that his first discussions about anabolic steroids occurred in 1993, when he was playing for the Houston Astros. Ken Caminiti, who also was then with the Astros, asked Donnels what he knew about steroids, and thereafter they spoke frequently about the subject and conducted their own research. Caminiti eventually told Donnels that he was going to try steroids; Donnels believes that was the first time Caminiti had tried them. Donnels felt that using steroids was “not the right thing to do,” and he decided against using the drugs then.

Donnels played in Japan for four years and then signed with the Dodgers organization in 2000 after reconstructive shoulder surgery. He considered “taking something to speed up his recovery,” and he recalled hearing “talk about HGH” during this time. Donnels began researching human growth hormone on his own. He knew that human growth hormone was illegal, but he was also aware that Major League Baseball did not test for it. While on a rehabilitation assignment with the Dodgers’ class AAA affiliate in Albuquerque, he talked to strength and conditioning coach Todd Seyler about human growth hormone, and they both conducted research on the internet. Seyler said that Donnels admitted using human growth hormone and seemed very knowledgeable about steroids.

One month into the 2001 season, Donnels hurt his back. He had 10 to 15 cortisone injections, and a Dodgers physician eventually told him he could not receive any more injections. Donnels called Radomski, who he had not spoken with since 1992. Donnels does not remember who referred him to Radomski, but he recalls having discussions with Todd Hundley about performance enhancing substances and Radomski. After some discussions, Radomski sold Donnels testosterone, Dianabol, Deca-Durabolin, human growth hormone, Vicodin, and amphetamines. Donnels said that the steroids and human growth hormone “sat around for awhile before [he] used them.”

Donnels did one six-week cycle of steroids and human growth hormone beginning in August 2001. Radomski sent Donnels a protocol dictating that he inject the steroids twice per week and inject the human growth hormone every day for two weeks. Donnels said that he only took 25% to 50% of what Radomski recommended. Donnels recalled “feeling pretty good going into the 2002 season.”



Donnels said that he told Dodgers athletic trainer Matt Wilson that he was considering using performance enhancing substances. Wilson told him to “look it up on the computer” and said “I don’t need to hear anything about it.”<sup>405</sup>

After starting his cycle of steroids and human growth hormone in 2001, Donnels was assigned to the Dodgers’ class AAA affiliate in Las Vegas for rehabilitation. While there, he was tested under the minor league testing program (which began in 2001). Donnels expected to test positive but never heard anything about the results of his test. He speculated that he may have been wrongly tested under the minor league program because he was on the Dodgers’ 40-man major league roster at the time. Donnels felt that he “dodged a bullet,” and the incident “scared him straight.”

Nevertheless, Donnels continued to use human growth hormone because there was no testing for it. Donnels stated that he purchased human growth hormone from Radomski in 2003 because his “body was going downhill,” and while playing in the minor leagues his team had a chance to go to the playoffs.

Donnels said that he again purchased human growth hormone from Radomski in 2004. He had enjoyed playing in 2003 so much that he was “looking for a farewell tour.” He said that many players use performance enhancing substances “just to stay on the field, not to set records.” Donnels ultimately decided not to use the human growth hormone he purchased from Radomski in 2004, however.

Donnels was approached by several players about the availability of performance enhancing substances during his playing days, and he referred several Major League Baseball

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<sup>405</sup> Wilson did not recall any such conversation with Donnels.

players to Radomski. Donnels contended he could not remember the names of those players but added that he probably would not identify any players that he did know to be using.

***Todd Williams***

Todd Williams has played as a pitcher with five teams in Major League Baseball since 1995, the Los Angeles Dodgers, Cincinnati Reds, Seattle Mariners, New York Yankees, and Baltimore Orioles, among many assignments in the minor leagues.

In 2001, a season in which Williams played in both Major League Baseball and the minor leagues, Radomski stated that he sold Winstrol to Williams once.

In order to provide Williams with information about these allegations and to give him an opportunity to respond, I asked him to meet with me. He did not respond to my request.

***Phil Hiatt***

Phil Hiatt played several positions in minor league baseball for fourteen seasons, in Japan for one season and for parts of four seasons (1993, 1995, 1996, and 2001) played with the Kansas City Royals, Detroit Tigers, and Los Angeles Dodgers in Major League Baseball.

Radomski first spoke to Hiatt while he was with the Dodgers in 2001. Over the span of several seasons, Radomski sold Hiatt both human growth hormone and Deca-Durabolin. According to Radomski, he sold these performance enhancing substances to Hiatt on two or three occasions.

For the first sale, Radomski sent a package addressed to Hiatt at the Dodgers clubhouse. On another occasion, he recalled sending a package to Hiatt at a Florida address. Radomski believed that he sent a third package to Hiatt when he was playing in the minor leagues (Hiatt played in the minors during the 2002-2004 seasons). He believed Hiatt paid by money order.

Radomski also spoke on the phone with Hiatt on a number of occasions. Hiatt called Radomski from time to time with questions about the use of performance enhancing substances.

In order to provide Hiatt with information about these allegations and to give him an opportunity to respond, I asked him to meet with me. He did not respond to my request.

***Todd Pratt***

Todd Pratt played as a catcher from 1992 to 2006 for four teams in Major League Baseball, the Philadelphia Phillies (8 seasons), Chicago Cubs (1 season), New York Mets (5 seasons), and Atlanta Braves (1 season).

Radomski became acquainted with Pratt after he joined the Mets in 1997. According to Radomski, Pratt informed him that he had previously bought Deca-Durabolin from another source.

Sometime in 2000 or 2001, while he was still with the Mets, Pratt asked to buy anabolic steroids. Radomski made one or two sales of small amounts of steroids to Pratt. Radomski also recalled having a few discussions with Pratt regarding their use.

In order to provide Pratt with information about these allegations and to give him an opportunity to respond, I asked him to meet with me. He did not respond to my request.

***Kevin Young***

Kevin Young played as an infielder in Major League Baseball from 1992 until 2003, for the Pittsburgh Pirates for nearly his entire career and for the Kansas City Royals for one season.

Radomski first met Young in New York City during the 2000-01 off-season. Young later called Radomski. While Radomski could not remember who introduced him to Young, he did remember that he was asked to bring two kits of human growth hormone to this

first meeting. Radomski said that he went to lunch with Young and afterward went up to Young's hotel room where Radomski sold him one or two kits of human growth hormone.

Young did not call Radomski again until 2003, during the final season of his career. Radomski said that he sold Young five or six kits of human growth hormone on this second occasion. He noted that he did not view this amount as unusual because Young needed the human growth hormone to recover from lingering injuries, and Radomski believed a five or six-month supply of human growth hormone was necessary to complete such a recovery. Radomski stated that Young mailed \$9,600 in cash to him as payment for this second transaction.<sup>406</sup>

Young's name, with multiple telephone numbers, is listed in the address book seized from Radomski's residence by federal agents.

In order to provide Young with information about these allegations and to give him an opportunity to respond, I asked him to meet with me. He did not respond to my request.

### ***Mike Lansing***

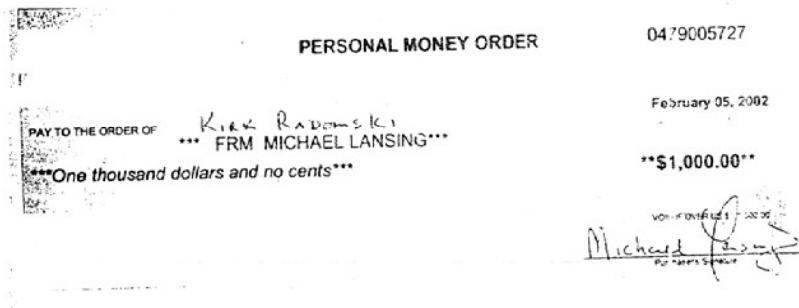
Mike Lansing played as an infielder in Major League Baseball from 1993 to 2001 with the Montreal Expos (5 seasons), Colorado Rockies (3 seasons), and Boston Red Sox (parts of 2 seasons).

According to Radomski, he was introduced to Lansing by David Segui while Segui and Lansing played together with the Expos. Radomski recalled that he engaged in four to five "small transactions" with Lansing. Radomski said that Lansing was familiar with testosterone and "knew exactly what he wanted." Radomski produced two \$1,000 money orders

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<sup>406</sup> The Pirates released Young at the end of June 2003. See Robert Dvorchak, *Pirates Say Goodbye to Young*, Pittsburgh Post-Gazette, June 29, 2003, at D1. Young previously had undergone surgery on his right knee. See Chuck Johnson, *National League: Who's up, down*, USA Today, Feb. 10, 2003, at 7C.

from Lansing, retrieved from his bank, made payable to Radomski; both were dated February 5, 2002. Both are included in the Appendix; one is shown below. Radomski stated that this payment was for testosterone and one kit of human growth hormone.



During the search of Radomski's residence, an undated, partial shipping label was seized with Lansing's name on it and a Colorado address. We have confirmed that Lansing resided at this address when he played with the Rockies. Lansing's name, with an address and two telephone numbers, is listed in the address book seized from Radomski's residence by federal agents.

In order to provide Lansing with information about these allegations and to give him an opportunity to respond, I asked him to meet with me. He did not respond to my request.

### ***Cody McKay***

Cody McKay played as a catcher in minor league baseball for ten seasons between 1996 and 2004. He was called up by the Oakland Athletics in 2002 and by the St. Louis Cardinals in 2004.

McKay's name is listed in the address book seized by federal agents from Radomski's residence, along with a telephone number that is still listed to and used by McKay. McKay's address in the address book is the clubhouse address for the Indianapolis Indians, a minor league team where McKay played in 2003.

Radomski said that he is not certain who referred McKay to him. He recalled, however, conversations with McKay which led to the sale of steroids shipped to the Victory Field address in Indianapolis. Radomski also recalled one additional sale of steroids to McKay, which he believed probably occurred in 2002 while McKay was playing for Oakland's class AAA affiliate in Sacramento. Radomski also recalled a number of telephone conversations in which McKay asked him about performance enhancing substance use.

In order to provide McKay with information about these allegations and to give him an opportunity to respond, I asked him to meet with me; he declined.

***Kent Mercker***

Kent Mercker pitched for nine different teams in Major League Baseball from 1989 to 2006, the Atlanta Braves, Baltimore Orioles, Cleveland Indians, Cincinnati Reds, St. Louis Cardinals, Boston Red Sox, Anaheim Angels, Colorado Rockies, and Chicago Cubs.

Radomski stated that he sold one kit of human growth hormone to Mercker in October 2002. Mercker had recently undergone surgery and, according to Radomski, was seeking human growth hormone because he believed it might accelerate his recovery.<sup>407</sup>

Radomski sent the growth hormone by overnight mail; Mercker paid by check.

Radomski produced one check from Mercker to Radomski in the amount of \$1,600. The check number and date are not legible. It is included in the Appendix and shown below.

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<sup>407</sup> Regarding Mercker's injury, see *MLB Notes*, Akron Beacon J., June 7, 2002, at C6; *Lions' Boyd Decides to Call It Quits*, Boston Globe, June 7, 2002, at E2; Troy E. Renck, *Improbability Hits Again, Mercker Sidelined Three to Six Weeks*, Denver Post, June 7, 2002, at D5.

GENE E. MERCKER

KIRK RADOMSKI \$ 1600.<sup>00</sup>  
SIXTEEN HUNDRED Dollars

*[Handwritten signature]*

During the search of Radomski's home, federal agents seized a copy of an Express Mail receipt indicating a shipment to Mercker on October 29, 2002. A copy is included in the Appendix.

In order to provide Mercker with information about these allegations and to give him an opportunity to respond, I asked him to meet with me. He did not respond to my request.

***Adam Piatt***

Adam Piatt played as an outfielder with two teams in Major League Baseball for portions of four seasons between 2000 and 2003, the Oakland Athletics and Tampa Bay Devil Rays. In 1999, he was the Oakland Athletics' Minor League Player of the Year.

After Radomski's guilty plea was publicly announced, Piatt's lawyer contacted us. We later interviewed Piatt, who voluntarily admitted his use of performance enhancing substances. He accepted full responsibility for his actions and said that he had learned an important life lesson as a result. Piatt should be commended for his candor, for his willingness to admit that he made a mistake, and for accepting responsibility for his actions.

Piatt was called up to Oakland from the minor leagues in 2000. He said that he knew nothing at that time about steroids or amphetamines. In 2001, Piatt contracted a viral infection and lost 24 pounds in ten days. This illness affected his strength and caused extreme

stress. He tried to come back to play baseball in August, but he was unsuccessful. Piatt said that he worked hard during the off-season to be physically prepared for 2002. During 2002, he started considering using human growth hormone. He researched the subject extensively that year.

Piatt recalled that he learned of Kirk Radomski through F.P. Santangelo. Santangelo and Piatt were teammates on the Oakland Athletics and on Oakland's minor league affiliate in Sacramento. Santangelo described Radomski to him as a personal trainer who was knowledgeable about dietary issues and as a steroids supplier.

Before obtaining any substances, Piatt had several conversations with Radomski. They discussed Piatt's diet and what Piatt should do and take to get in optimal shape for the upcoming year. Radomski recommended that Piatt modify his diet and work on getting in shape before he started using human growth hormone. The conversations were all by telephone. Piatt never met Radomski in person.

Piatt believed he initially obtained human growth hormone and either testosterone or Deca-Durabolin from Radomski. The substances sat unused for a long time, however, before he tried them. He was more concerned with the possible long-term health risks than with the ethical issues.

He also thought about the problems he was having in baseball. A friend on the team told Piatt that he lacked the bat speed he had enjoyed before his illness. Ultimately, Piatt began using performance enhancing substances during the 2002-03 off-season. Piatt's typical regimen was to take one shot of testosterone per week for three to five weeks. He also injected himself with human growth hormone every day until he contracted carpal tunnel syndrome. He talked to Radomski about this side effect and then decreased the frequency of his use.



Survey drug testing was conducted in Major League Baseball in 2003. Piatt did not change his regimen because of that testing. He was tested sometime during the summer.

Piatt retired from baseball in 2004 at the age of 28 because he had lost his love for the game. He believes that he could have played longer. According to Piatt, the time he used illegal substances was the only time he did not enjoy baseball. He thought he had “compromised something.”

Piatt made some payments to Radomski in 2004, but he said that those were to satisfy old debts for 2003 shipments. He said he had no need for, and did not use, human growth hormone after he retired. Piatt noted that Radomski never encouraged Piatt to use more substances after Piatt said he wanted to stop. Radomski provided eight checks from Piatt, with dates ranging from 2002 to 2004, and totaling \$11,550. All are included in the Appendix. One is shown below.

Adam David Piatt

2090

7-8-03 DATE 3-5/310

PAID TO THE ORDER OF Kirk Radowski \$ 2,500.00

Two Thousand Five Hundred Dollars & 00/100 DOLLARS

SCHWAB ONE

FOR \_\_\_\_\_

*Adam David Piatt*

**Miguel Tejada**

Miguel Tejada is a shortstop who has played for two teams in Major League Baseball since 1997, the Oakland Athletics (7 seasons) and Baltimore Orioles (4 seasons). He was the American League Most Valuable Player in 2002. He played in every game from June 2, 2000 until June 21, 2007, the fifth longest streak of consecutive games played in Major League

Baseball history. Tejada has played in four All-Star games and was the Most Valuable Player of the 2005 All-Star game.

In 2003, Adam Piatt's locker was located next to Tejada's in the Oakland Athletics clubhouse. According to Piatt, Tejada asked specifically if he had any steroids. Piatt believed that Tejada asked him because Piatt was in good shape and generally friendly with him.

Piatt had several conversations with Tejada before a transaction occurred. Piatt admitted he had access to steroids and human growth hormone and agreed to obtain them for Tejada. Piatt recalled that he provided Tejada with testosterone or Deca-Durabolin, as well as human growth hormone. Piatt emphasized that he did not know whether Tejada actually used the substances.


Piatt's bank provided two checks deposited into Piatt's account that had been written to him from Miguel Tejada. The checks are dated March 21, 2003 and are in the amounts of \$3,100 and \$3,200 respectively. Both are included in the Appendix; one is shown below.

MIGUEL TEJADA 1104

3-21-03 / etc.

Pay to the Order of Adam Piatt \$ 3100.00

Three Thousand One hundred and  $\frac{00}{100}$  / etc.

For \_\_\_\_\_  \_\_\_\_\_

Separately, before our interviews of him, Piatt also spoke with federal agents by telephone. Piatt had his personal lawyer present for this call, as he did in his meetings with me

and my investigative staff. The federal agents later advised my staff that Piatt also informed them of Piatt's sales to Tejada during their telephone interview.

Radomski recalled receiving a call from Piatt during which he said he needed extra testosterone because "one of the guys wanted some." In a later conversation, Piatt told Radomski that the testosterone was for his teammate, Miguel Tejada. Radomski never spoke, or sold performance enhancing substances, directly to Tejada. Radomski provided this information to me without knowledge that I had spoken to Piatt or that I was otherwise aware of Piatt's alleged sales to Tejada. Similarly, Piatt was unaware of any statements by Radomski on this subject when he was interviewed by my investigative staff.

As discussed earlier in this report, Tejada was interviewed as part of a congressional investigation into whether Rafael Palmeiro had lied under oath about his use of performance enhancing substances during a March 17, 2005 congressional committee hearing.<sup>408</sup> In that investigation, Palmeiro said he had received injectable, and legal, vitamin B12 from Tejada; Palmeiro said it was possible the vitamin B12 had been tainted and had been the reason for his positive test for steroids. Tejada admitted to investigators that he provided injectable vitamin B12 to Palmeiro and two other unidentified Orioles players during the 2005 season. The congressional report said that the Players Association had tested another vial of vitamin B12 provided by Tejada and it showed no signs of steroids.<sup>409</sup>

Tejada is also mentioned in two books on the subject. In *Juicing the Game*, the author Howard Bryant wrote that during the 2002 season, an airport security screener found a syringe in Tejada's briefcase. Tejada reportedly explained that he received a supply of vitamin

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<sup>408</sup> See *supra* at 103-06; see also H. Comm. on Gov't Reform, *Report on Investigation Into Rafael Palmeiro's March 17, 2005 Testimony Before the Comm. on Gov't Reform*, at 6 (109<sup>th</sup> Cong. 2005) ("Palmeiro Report").

<sup>409</sup> Palmeiro Report at 9-10, 25, 27.

B12 from the Dominican Republic that he administered to himself.<sup>410</sup> Mickey Morabito, the director of team travel for the Oakland Athletics, confirmed the incident in an interview with my investigative staff. He acknowledged that he did not report the incident to anyone with the club or the Commissioner's Office.

In his book *Juiced*, Jose Canseco wrote that, in 1997, when he and Tejada were teammates on the Athletics, they discussed the use of performance enhancing substances:

I started giving him [Tejada] advice about steroids, and he seemed interested in what I was saying. Tejada and I had a secret weapon: We could speak in Spanish, which made it easier to talk about whatever he wanted, even if there were reporters around.<sup>411</sup>

Tejada denied that he had ever had any discussions with Canseco about steroids. He was further reported to say: "I work very hard to keep in shape and any suggestion that I use steroids, or any banned substance is insulting and not worth discussing further."<sup>412</sup>

In December 2005, Texas Rangers owner Thomas O. Hicks and general manager Jon Daniels engaged in an email exchange about possible trade discussions. In one email, Daniels stated that he had "some steroids concerns with Tejada," and cited Tejada's decreased productivity over the second half of the 2005 season.<sup>413</sup>

In order to provide Tejada with information about these allegations and to give him an opportunity to respond, I asked him to meet with me; he declined.

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<sup>410</sup> Howard Bryant, *Juicing The Game* 335 (Plume 2005).

<sup>411</sup> Jose Canseco, *Juiced: Wild Times, Rampant 'Roids, Smash Hits and How Baseball Got Big* 177 (Regan Books 2005).

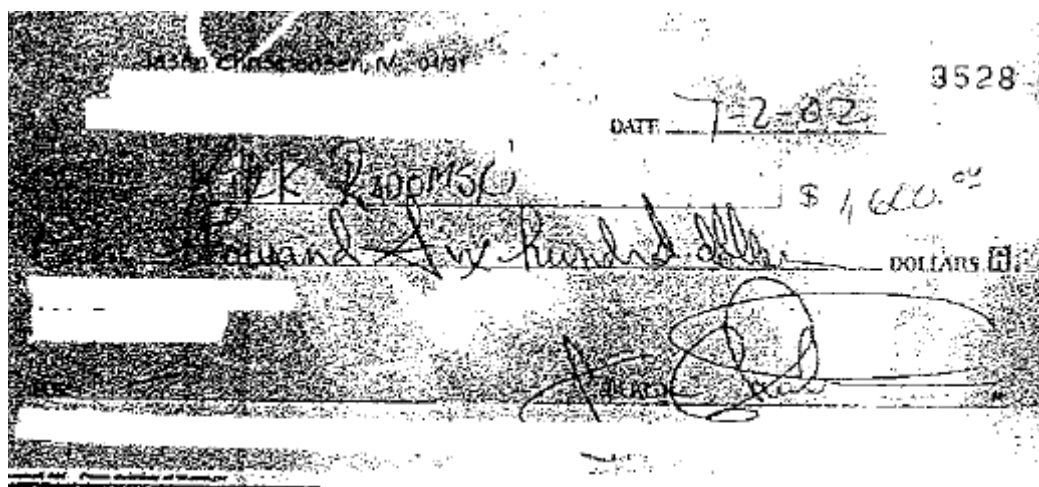
<sup>412</sup> See Associated Press, *Report: FBI Agent Says He Warned MLB about Steroid Use*, Chi. Sun-Times, Feb. 16, 2005, at 134.

<sup>413</sup> Email from Jon Daniels to Thomas O. Hicks, dated Dec. 15, 2005.

***Jason Christiansen***

Jason Christiansen pitched for four teams in Major League Baseball between 1995 and 2005, the Pittsburgh Pirates, St. Louis Cardinals, San Francisco Giants, and Los Angeles Angels.

Radomski produced a check dated July 2, 2002 from Christiansen to Radomski in the amount of \$1,600. The check is included in the Appendix and is shown below. Radomski stated that this was payment for one kit of human growth hormone and that this was a one-time transaction.



In order to provide Christiansen with information about these allegations and to give him an opportunity to respond, I asked him to meet with me; he did not respond.

***Mike Stanton***

Mike Stanton is a pitcher who has played Major League Baseball with eight teams since 1989, the Atlanta Braves (7 seasons), Boston Red Sox (parts of 3 seasons), Texas Rangers (part of 1 season), New York Yankees (7 seasons), New York Mets (2 seasons), Washington Nationals (parts of 2 seasons), San Francisco Giants (part of 1 season), and Cincinnati Reds (1 season). He has been selected to an All-Star team once.

Radomski met Stanton around 2001 while he was pitching for the Yankees.

Radomski recalled making two sales of human growth hormone to Stanton. The first occurred in 2003, during Stanton's first season with the Mets. Early in that season, Radomski mailed two kits of human growth hormone to Stanton at his residence. Stanton paid Radomski \$3,200 by money order.

Radomski stated that he dropped off one kit of human growth hormone at Stanton's locker in the Mets clubhouse later in the 2003 season. Stanton paid \$1,600 in cash for that order. Radomski and Stanton spoke on the telephone two or three times in the course of these sales.

In order to provide Stanton with information about these allegations and to give him an opportunity to respond, I asked him to meet with me; he declined.

***Stephen Randolph***

Stephen Randolph is a pitcher who spent most of his career in the minor leagues. In 2003 and 2004, he played with the Arizona Diamondbacks, and in 2007 he played with the Houston Astros.

Radomski recalled that Chris Donnels referred Randolph to him while Randolph was with the Diamondbacks.<sup>414</sup> Radomski said that he spoke to Randolph several times about human growth hormone and then told Randolph to do some research before using it. Radomski said that he sold Randolph human growth hormone thereafter, in 2003 or 2004. Randolph's name, with a telephone number, is listed in the address book seized from Radomski's residence by federal agents. Radomski mailed the package of human growth hormone to the address listed in his address book.

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<sup>414</sup> Donnels denied that he introduced Randolph to Radomski.

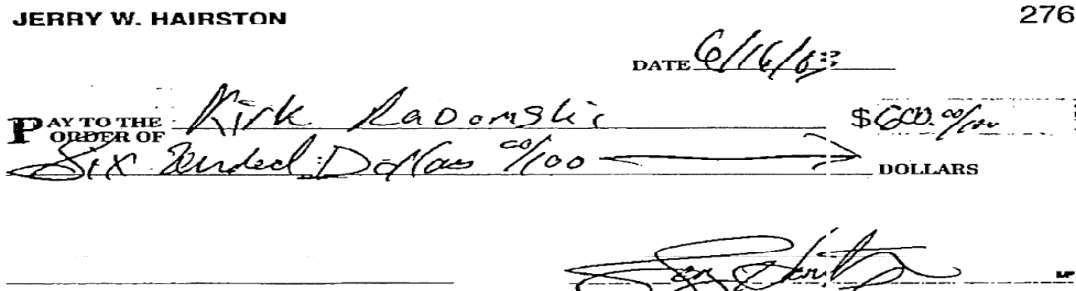
In order to provide Randolph with information about these allegations and to give him an opportunity to respond, I asked him to meet with me; he declined.

***Jerry Hairston, Jr.***

Jerry Hairston, Jr. has played in Major League Baseball since 1998, for the Baltimore Orioles (7 seasons), Chicago Cubs (2 seasons), and Texas Rangers (2 seasons).

Hairston was referred to Radomski by David Segui, his teammate on the Orioles from 2002 to 2004. Radomski said that he sold human growth hormone to Hairston on two or three occasions during 2003 and 2004.

Radomski produced one check from Hairston dated June 16, 2003. The check is included in the Appendix and is shown below.



Radomski said that this check was for one-half of a kit of human growth hormone. Radomski recalled that Hairston underpaid him by \$200. Hairston's name, with an address and two telephone numbers, is listed in the address book seized from Radomski's residence by federal agents.

In March 2007, Sports Illustrated reported that Hairston's name was included in customer records of Applied Pharmacy Services, a compounding pharmacy that has been the

subject of state and federal law enforcement investigations.<sup>415</sup> As discussed further below, according to that report, Hairston received a prescription for human growth hormone from a doctor who allegedly wrote prescriptions for thousands of online customers she never examined.<sup>416</sup> Hairston spoke to the press after these reports appeared. He said, “It’s disturbing. . . . I have no idea what this is about. I’m really in the dark. Not one time have I taken steroids or anything like that. I would never do anything like that to jeopardize my career.”<sup>417</sup>

In order to provide Hairston with information about these allegations and to give him an opportunity to respond, I asked him to meet with me; he declined.

### ***Paul Lo Duca***

Paul Lo Duca is a catcher who has played with three teams in Major League Baseball since 1998, the Los Angeles Dodgers (7 seasons), Florida Marlins (2 seasons), and New York Mets (2 seasons). He has appeared in four All-Star games.

Todd Hundley referred Lo Duca to Radomski when Lo Duca played for the Dodgers. Radomski estimated that he engaged in six or more transactions with Lo Duca. In some transactions, Radomski sent the performance enhancing substances by overnight mail to Lo Duca’s home or to the Dodgers clubhouse and Lo Duca sent Radomski a check a week or so later.

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<sup>415</sup> See Luis Fernando Llosa and L. Jon Wertheim, *Documents: Hairston received HGH; Bogus prescriptions at heart of probe; Player ‘baffled,’* SI.com, Mar. 2, 2007.

<sup>416</sup> Luis Fernando Llosa and L. Jon Wertheim, *Rx for Trouble: Inside the Steroid Sting*, Sports Illustrated, Mar. 12, 2007, at 62.

<sup>417</sup> Luis Fernando Llosa and L. Jon Wertheim, *Documents: Hairston received HGH; Bogus prescriptions at heart of probe; Player “‘baffled,”* SI.com, Mar. 2, 2007.



Radomski produced copies of three checks from Lo Duca, each in the amount of \$3,200. All are included in the Appendix. Radomski said that each check was in payment for two kits of human growth hormone.

Lo Duca's name, with an address and telephone number, is listed in the address book seized from Radomski's residence by federal agents. During that search, federal agents also seized a note from Lo Duca to Radomski. It read:

Kirk,

Sorry! But for some reason they sent the check back to me. I haven't been able to call you back because my phone is TOAST! I have a new # it is [Lo Duca's phone number is listed here]. Please leave your # again because I lost all of my phonebook with the other phone.

Thanks

Paul

In 2002, Lo Duca was quoted by Sports Illustrated in an article responding to Ken Caminiti's admission of steroid use. Lo Duca was reported to have said: "If you're battling for a job, and the guy you're battling with is using steroids, then maybe you say, 'Hey, to compete, I need to use steroids because he's using them . . . Don't get me wrong. I don't condone it. But it's a very tough situation. It's really all about survival for some guys.'"<sup>418</sup>

According to the notes of an internal discussion among Los Angeles Dodgers officials in October 2003 that were referred to above, it was reportedly said of Lo Duca during the meetings:

Steroids aren't being used anymore on him. Big part of this. Might have some value to trade . . . Florida might have interest. . . . Got off the steroids . . . Took away a lot of hard line drives. . . . Can get comparable value back would consider trading. . . . If you do trade him, will get back on the stuff and try to show you he

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<sup>418</sup> *The Steroid Fallout: Baseball Tries to Figure Out How to Deal with Latest Scandal*, SI.com, May 29, 2002.

can have a good year. That's his makeup. Comes to play. Last year of contract, playing for 05.<sup>419</sup>

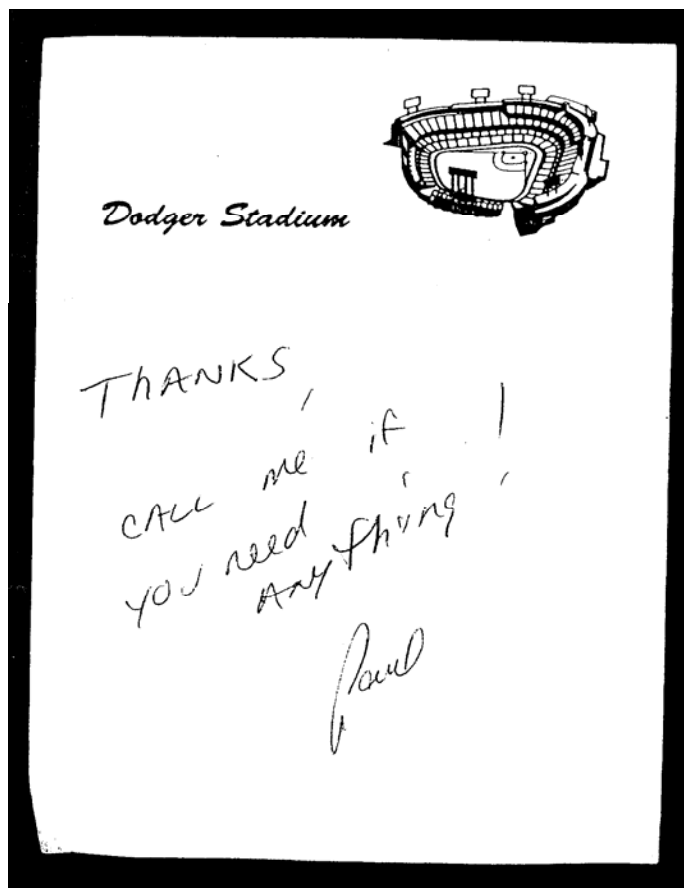
On June 26, 2004, Lo Duca wrote a check to Radomski for \$3,200. On July 30, 2004, the Dodgers traded Lo Duca, Guillermo Mota, and Juan Encarnacion to the Marlins.<sup>420</sup> On August 7, 2004, Lo Duca issued another check to Radomski for \$3,200. In January 2005, Lo Duca signed a three-year contract with the Marlins.

The handwritten note shown below on Dodger Stadium stationary from Lo Duca to Radomski was seized from Radomski's house during a search by federal agents. Radomski said that this note was included with a check Lo Duca sent Radomski as payment for human growth hormone.

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<sup>419</sup> See *supra* at 131 (discussing notes and meetings).

<sup>420</sup> See Jack Curry, *Johnson Stays, but Garciparra Goes to Cubs*, N.Y. Times, Aug. 1, 2007, at Sports 1.



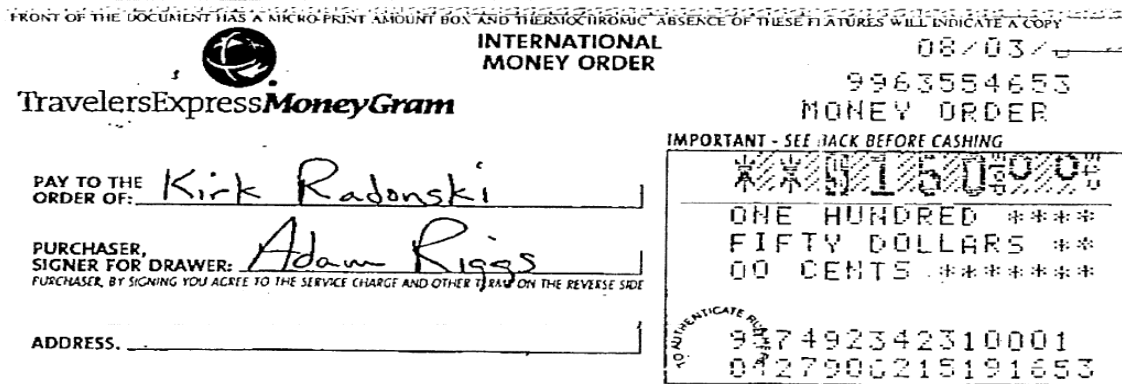
In order to provide Lo Duca with information about these allegations and to give him an opportunity to respond, I asked him to meet with me; he declined.

***Adam Riggs***

Adam Riggs played several positions in portions of four seasons with three teams in Major League Baseball between 1997 and 2004, the Los Angeles Dodgers, San Diego Padres, and Anaheim Angels. He also played in the minor leagues for eleven seasons. Since 2004, he has played professional baseball in Japan.

According to Radomski, Lo Duca referred Riggs to him. Radomski subsequently engaged in six to ten transactions with Riggs from 2003 to 2005. Radomski never met Riggs in person. Radomski said that he sold Riggs human growth hormone, clenbuterol, and Winstrol.

Radomski produced five checks and money orders that he received from Riggs and deposited into his bank accounts. The dates ranged from July 10, 2003 to November 30, 2005. Four checks totaled \$1,150; the other check amount was illegible. All are included in the Appendix. One of the money orders is shown below.



During the search of Radomski's residence, federal agents seized an Express Mail receipt dated November 30, 2005 addressed to Adam Riggs. Riggs's name, with a telephone number, is listed in the address book seized from Radomski's residence by federal agents.

In order to provide Riggs with information about these allegations and to give him an opportunity to respond, I asked him to meet with me; he declined. By letter, his lawyer stated that Riggs "never tested positive for improper substances."

### ***Bart Miadich***

Bart Miadich played professional baseball as a pitcher from 1998 to 2006 but played only portions of two seasons (2001 and 2003) in Major League Baseball, both with the Anaheim Angels.

Radomski recalled that Adam Riggs introduced him to Miadich. Radomski described Miadich as a frequent purchaser of small quantities of testosterone and Winstrol from

2002 to 2005. Radomski also said that Miadich advised him that he was getting human growth hormone elsewhere. According to Radomski, Miadich called him regularly, including when Miadich was playing in Japan in 2005, when he called to buy performance enhancing substances for use during the upcoming off-season.

Chad Allen, who has admitted using steroids, was a teammate of Miadich. He said that Miadich's size, muscle definition, and tightness of skin indicated to him that Miadich was using steroids. He recalled Miadich's problems with "roid rage," describing how Miadich sometimes smashed objects in the clubhouse after a bad game.

Miadich's name, with an address and telephone number, is listed in the address book seized from Radomski's residence by federal agents.

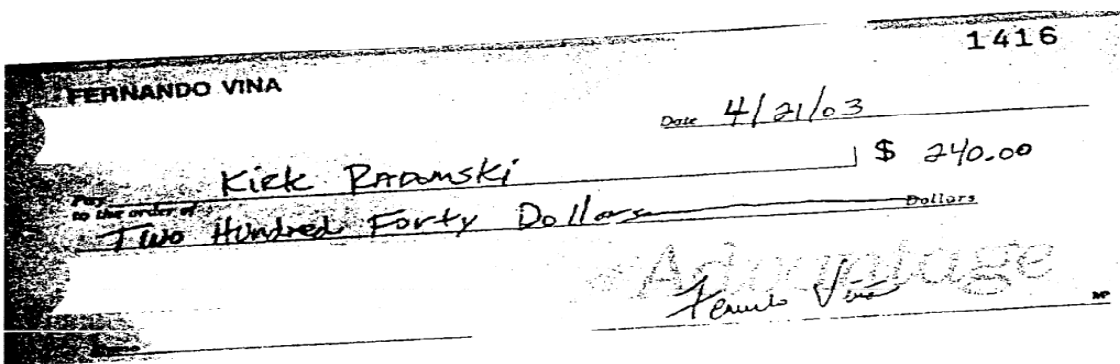
In order to provide Miadich with information about these allegations and to give him an opportunity to respond, I asked him to meet with me. He did not respond to my request.

### ***Fernando Vina***

Fernando Vina played several positions with five teams in Major League Baseball from 1993 until 2004, the Seattle Mariners, New York Mets, Milwaukee Brewers, St. Louis Cardinals, and Detroit Tigers. He played in the 1998 All-Star game and won two National League Golden Glove Awards as a second baseman. During the 2007 baseball season, he was a commentator for ESPN's *Baseball Tonight*.

While Radomski was working for the Mets as a clubhouse attendant in 1993, he met Vina, who was then in the Mets minor league system. Radomski stated that he sold anabolic steroids or human growth hormone to Vina six to eight times during 2000 to 2005. Radomski produced three checks from Vina. Radomski stated that these checks reflected a March 2003 purchase by Vina of human growth hormone, an April 2003 purchase by Vina of steroids, most

likely Winstrol, and a July 2005 purchase by Vina of Deca-Durabolin.<sup>421</sup> All of the checks are included in the Appendix. One is shown below.



Radomski recalled details of these steroids sales, including a discussion with Vina about how quickly Winstrol will “clear the body” and another discussion in which Vina said that the July 2005 purchase of Deca-Durabolin was intended to assist Vina in preparing for spring training in 2006. Vina’s name, with an address and two telephone numbers, is listed in the address book seized from Radomski’s residence by federal agents.

In order to provide Vina with information about these allegations and to give him an opportunity to respond, I asked him to meet with me. He did not respond to my request.

### ***Kevin Brown***

Kevin Brown pitched for six teams in Major League Baseball between 1986 and 2005, the Texas Rangers (8 seasons), Baltimore Orioles (1 season), Florida Marlins (2 seasons), San Diego Padres (1 season), Los Angeles Dodgers (5 seasons), and New York Yankees

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<sup>421</sup> Although Vina had retired from baseball in 2004, Radomski said that in 2005 he was contemplating a return.

(2 seasons). He played in six All-Star games. He was the San Diego Padres Player of the Year in 1998 and the Los Angeles Dodgers Player of the Year in 1999.

Radomski said that Paul Lo Duca referred Brown to him in 2000 or 2001 when Brown and Lo Duca were teammates with the Dodgers. Brown called Radomski and they spoke about human growth hormone for one or two hours. Radomski said that Brown was “very knowledgeable” about human growth hormone. Brown was placed on the disabled list in June 2001 with a neck injury and in July 2001 with an elbow injury. After Brown got hurt, he called Radomski again and asked for human growth hormone.

Radomski said that he sent human growth hormone to Brown by overnight mail and called Brown several times to make sure he had received it. Brown finally returned Radomski’s call and confirmed he had received it. Soon thereafter, Radomski returned home one day to find an express delivery package from Brown on his doorstep, wet from the rain. When he opened it, he found that it contained \$8,000 in cash. Radomski called Brown and told him not to check the signature waiver box on the overnight delivery package when he was sending cash, because the envelope was left on Radomski’s doorstep for several hours and could have been taken.

According to Radomski, over the next two or three years he sold performance enhancing substances to Brown five or six times. Radomski recalled that Brown usually purchased multiple kits of human growth hormone. Brown sent cash, sometimes as much as \$10,000, to Radomski by overnight mail, and he used his agent’s business address as the return address. At one point, Brown asked Radomski for Deca-Durabolin to help with an ailing elbow, and Radomski sold it to him. (In 2002, Brown was placed on the disabled list with an elbow injury.)

Brown's name, with an address and several telephone numbers, is listed in the address book seized from Radomski's residence by federal agents. Agents also seized an Express Mail receipt dated June 7, 2004 addressed to "Kevin Brown, [address]." A copy of that receipt is included in the Appendix and is shown below.

In the notes of the October 2003 meetings among Dodgers officials, it was reportedly said of Brown:

Kevin Brown – getting to the age of nagging injuries . . . Question what kind of medication he takes . . . Effectiveness goes down covering 1st base or running bases. Common in soccer players and are more susceptible if you take meds to increase your muscles – doesn't increase the attachments. Is he open to adjusting how he takes care of himself? He knows he now needs to do stuff before



coming to spring training to be ready. Steroids speculated by GM.<sup>422</sup>

Less than two months later, the Dodgers traded Brown to the Yankees.<sup>423</sup>

In order to provide Brown with information about these allegations and to give him an opportunity to respond, I asked him to meet with me; he declined.

### *Eric Gagné*

Eric Gagné is a relief pitcher who began his career in Major League Baseball with the Los Angeles Dodgers in 1999 and played with the Dodgers through 2006. In 2007, he played for the Texas Rangers and the Boston Red Sox, and in December he signed with the Milwaukee Brewers. In 2002 and 2003, Gagné was the Los Angeles Dodgers Player of the Year. In 2003, he saved 55 games and won the Cy Young Award and the National League Rolands Relief Pitcher of the Year. In 2004, he saved 45 games and again won the National League Rolands Relief Pitcher of the Year. He has played in three All-Star games.

Paul Lo Duca and Gagné were teammates with the Dodgers from 1999 to 2004. Although he is not sure when, Radomski recalled that Lo Duca called Radomski and told Radomski that Gagné was with him and wanted to buy human growth hormone. Gagné then came onto the phone and asked Radomski a question about how to get air out of a syringe. This is the only time Radomski spoke to Gagné. Radomski said that Lo Duca thereafter placed orders on Gagné's behalf.

Radomski said that he mailed two shipments to Gagné, each consisting of two kits of human growth hormone. One was sent to Gagné's home in Florida; the other was sent to Dodger Stadium. Federal agents seized from Radomski's home a copy of an Express Mail

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<sup>422</sup> See *supra* at 131 (discussing meetings and notes).

<sup>423</sup> See Tyler Kepner, *Sheffield Thinks Twice; No Hesitation for Brown*, N.Y. Times, Dec. 15, 2003, at Sports 1.

receipt showing a shipment to “Dodger Stadium, c/o Eric Gagne – L.A. Dodgers Home Club, 1000 Elysian Park Ave., Los Angeles, California 90012” dated August 9, 2004. A copy of this receipt is included in the Appendix and is shown below. Radomski said that this was for one of the shipments of human growth hormone to Gagné.

**Customer Copy**  
Label 11-B September 2002

**EXPRESS MAIL**  
UNITED STATES POSTAL SERVICE®

**Post Office To Addressee**

**ORIGIN (POSTAL USE ONLY)**

PO ZIP Code: 11949  
 Day of Delivery:  Next  Second  Flat Rate Envelope  
 Date In: Mo. 8 Day 9 Year 04  
 Time In:  AM  PM  
 12 Noon  3 PM  
 Postage: \$  
 Return Receipt Fee: \$  
 Weight: lbs. ozs.  
 Int'l Alpha Country Code:   
 COD Fee: \$ Insurance Fee: \$  
 No Delivery:  Weekend  Holiday  
 Acceptance Clerk Initials: *hr*  
 Total Postage & Fees: \$ 11.85

**DELIVERY (POSTAL USE ONLY)**

Delivery Attempt: Time:  AM  PM Employee Signature: \_\_\_\_\_  
 Delivery Attempt: Time:  AM  PM Employee Signature: \_\_\_\_\_  
 Delivery Date: Time:  AM  PM Employee Signature: \_\_\_\_\_

**CUSTOMER USE ONLY**

PAYMENT BY ACCOUNT  
 Express Mail Corporate Acct. No. \_\_\_\_\_  
 Federal Agency Acct. No. or Postal Service Acct. No. \_\_\_\_\_

**NO DELIVERY**  
 Weekend  Holiday

**WAIVER OF SIGNATURE (Customer Use Only)**  
 Additional merchandise insurance is void if waiver of signature is requested.  
 Signature to be made without obtaining signature of addressee or address agent (if delivery employee judges that article can be left in secure location) and I authorize that delivery employee's signature constitutes valid proof of delivery.

Customer Signature: \_\_\_\_\_

**FROM: (PLEASE PRINT)** PHONE (631) 325-9279  
 K. RADOMSKI  
 REDACTED

**TO: (PLEASE PRINT)** PHONE ( ) \_\_\_\_\_  
 DODGER STADIUM  
 c/o ERIC GAGNE - L.A. DODGERS-HOME CLUB  
 1000 ELYSIAN PARK AVE.  
 LOS ANGELES, CA 90012

9 0 0 1 2 + [ ] [ ] [ ] [ ]  
 ZIP + 4

**FOR PICKUP OR TRACKING CALL 1-800-222-1811**  
**www.usps.com**  
 PRESS HARD. You are making 3 copies. **EMS**

Lo Duca paid Radomski for one of the shipments to Gagné by cashier’s check in the amount of \$3,200. The Lo Duca checks supplied by Radomski reflect two payments of \$3,200 (each the cost of two kits) within a six-week time frame during the summer of 2004. Radomski said that, on one other occasion, Gagné sent Radomski \$3,200 in cash by FedEx.

According to notes of the October 2003 meetings of Dodgers officials, it was reportedly said of Gagné that: “he probably takes medication and tendons and ligaments don’t build up just the muscle.”<sup>424</sup>

When the Boston Red Sox were considering acquiring Gagné, a Red Sox official made specific inquiries about Gagné’s possible use of steroids. In a November 1, 2006 email to a Red Sox scout, general manager Theo Epstein asked, “Have you done any digging on Gagne? I know the Dodgers think he was a steroid guy. Maybe so. What do you hear on his medical?”<sup>425</sup> The scout, Mark Delpiano, responded,

Some digging on Gagne and steroids IS the issue. Has had a checkered medical past throughout career including minor leagues. Lacks the poise and commitment to stay healthy, maintain body and re invent self. What made him a tenacious closer was the max effort plus stuff . . . Mentality without the plus weapons and without steroid help probably creates a large risk in bounce back durability and ability to throw average while allowing the change-up to play as it once did . . . Personally, durability (or lack of) will follow Gagne . . .<sup>426</sup>

In order to provide Gagné with information about these allegations and to give him an opportunity to respond, I asked him to meet with me; he declined.

### ***Mike Bell***

Mike Bell played as an infielder for several minor league teams from 1993 to 2005. In 2000, Bell played in nineteen games for the Cincinnati Reds. In 2007, Bell was named manager of the Yakima Bears, a minor league affiliate of the Arizona Diamondbacks.

Radomski said that he sold Bell a kit of human growth hormone but could not be certain of the date of the sale. As a club employee, Bell was required by the Commissioner to

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<sup>424</sup> See *supra* at 131 (discussing meetings and notes).

<sup>425</sup> Email from Theo Epstein to Marc DelPiano, dated Nov. 1, 2006.

<sup>426</sup> Email from Marc DelPiano to Theo Epstein, dated Nov. 1, 2006.

meet with us. In that interview, Bell said that he purchased and received one shipment of human growth hormone from Radomski while in the minor leagues during the 2003 off-season. Bell never met Radomski but recalled hearing his name during the two seasons (1998 and 1999) that he spent in the Mets' minor league system. When asked how he came to know that Radomski could obtain performance enhancing substances for him, Bell said that "a lot of people knew him and knew what he did."

Bell said he did not recall who gave him Radomski's telephone number, which he believed he obtained after his time in the Mets organization. Bell telephoned Radomski and told him that he wanted to obtain human growth hormone. Sometime after that first telephone call, Bell received a package in the mail from Radomski that contained what he presumed was human growth hormone. He then called Radomski again and asked how to use it. Over a two-to-three month period, Bell used most, but not all, of the human growth hormone sent to him by Radomski. He does not recall how he paid Radomski for the shipment. Bell had no further contact with Radomski.

Bell said he purchased human growth hormone from Radomski only once and never received any other product, free or purchased, from Radomski. Bell also said that he never told anyone, other than his wife, that he obtained human growth hormone from Radomski and never gave anyone else Radomski's contact information. Bell did not recall discussing any other baseball player with Radomski. Other than this one instance, Bell said he has never used any performance enhancing substance.

Bell's name, with an address and telephone number, is listed in the address book seized by federal agents from Radomski's residence.

***Matt Herges***

Matt Herges is a pitcher who has played for seven teams in Major League Baseball since 1999, the Los Angeles Dodgers, Montreal Expos, San Francisco Giants, San Diego Padres, Arizona Diamondbacks, Florida Marlins, and Colorado Rockies.

Herges was a teammate of catcher Paul Lo Duca with the Dodgers from 1999 to 2001. According to Radomski, Herges called Radomski and said that Lo Duca had given him Radomski's telephone number. Radomski said that he made two or three sales of human growth hormone to Herges. His first contact with Herges might have been as early as 2004 and his last sale to him was in late 2005, not long before federal agents executed the search warrant on Radomski's residence. Radomski never met Herges in person.

Shortly after the federal search warrant was executed on Radomski's home, Herges again called Radomski and asked if he could sell him human growth hormone. Radomski, who by then was cooperating with federal law enforcement authorities, informed Herges that he "was dry right now" and could not supply Herges with any growth hormone at that time. Herges did not contact him again.

Radomski produced one check from Herges dated November 1, 2005 in the amount of \$3,240. The check is included in the Appendix and is shown below. Radomski said that this check was in payment for two kits of human growth hormone, plus \$40 for shipping. A piece of an undated shipping receipt to Herges and a copy of an Express Mail receipt dated November 2, 2005 sent to the same address were seized from Radomski's residence by federal agents. Both are included in the Appendix.

MATTHEW HERGES

373

DATE 11/1/05

PAY TO THE ORDER OF KIRK RADOMSKI \$3,240.00

THREE THOUSAND TWO HUNDRED FORTY DOLLARS AND 00/100 DOLLARS

ABCDEFGHIJKL MNOPQRST UVWXYZ

MEMO THANKS!

MP

In order to provide Herges with information about these allegations and to give him an opportunity to respond, I asked him to meet with me; he declined.

**Gary Bennett, Jr.**

Gary Bennett, Jr. is a catcher who since 1995 has played with seven teams in Major League Baseball, the Philadelphia Phillies, New York Mets, Colorado Rockies, San Diego Padres, Milwaukee Brewers, Washington Nationals, and St. Louis Cardinals.

Radomski said that Denny Neagle referred Bennett to him. Neagle and Bennett were teammates in 2001 and 2002 with the Colorado Rockies. Radomski recalled one transaction with Bennett in July 2003 for two kits of human growth hormone. Radomski produced one check from Bennett payable to Kirk Radomski in the amount of \$3,200 dated July 13, 2003. A copy is included in the Appendix and is shown below.

GARY D. BENNETT, JR.

1740

DATE 7/13/03

Kirk Radomski: \$3200.00/100  
PAY TO THE ORDER OF  
Three thousand Two Hundred and 00/100 DOLLARS

MEMO

Bennett's name, with an address and a telephone number, is listed in the address book seized from Radomski's residence by federal agents.

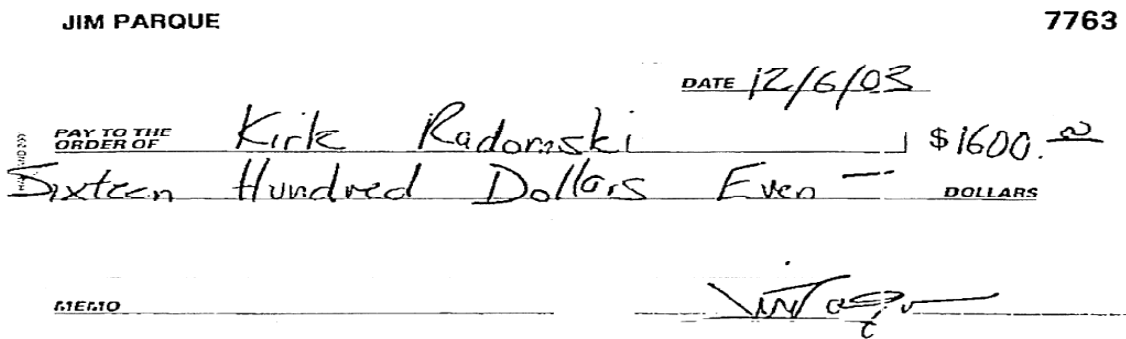
In order to provide Bennett with information about these allegations and to give him an opportunity to respond, I asked him to meet with me; he declined.

***Jim Parque***

Jim Parque pitched in Major League Baseball for the Chicago White Sox and Tampa Bay Devil Rays from 1998 through 2003. In 2004, he played for Arizona's class AAA affiliate. He announced his retirement at the end of that season because of shoulder injuries, but in 2007 he played for Seattle's class AAA affiliate.

Radomski did not recall who referred Parque to him but said that he made two sales of human growth hormone to him. Radomski said that during the 2003 off-season Parque sent Radomski a bottle of Winstrol to "check out." Radomski determined it was "no good" and discarded it.

Radomski produced two checks from Parque. The first was dated October 18, 2003 in the amount of \$3,200; the second was dated December 6, 2003 in the amount of \$1,600. Both are included in the Appendix. One is shown below.



Parque's name, with an address and two telephone numbers, is listed in the address book seized from Radomski's residence by federal agents.

In order to provide Parque with information about these allegations and to give him an opportunity to respond, I asked him to meet with me. He did not respond.

***Brendan Donnelly***

Brendan Donnelly is a pitcher who has played with two teams in Major League Baseball since 2002, the Los Angeles Angels and Boston Red Sox. He was selected to play in the All-Star game in 2003.

Radomski said that Donnelly was referred to him by Adam Riggs. Both Riggs and Donnelly played for the Angels in 2003 and 2004. Radomski recalled that Donnelly called him in 2004 looking for Anavar, an anabolic steroid. Radomski made one sale to Donnelly of Deca-Durabolin for which Donnelly paid \$250 to \$300.

In considering whether to trade for Donnelly in 2007, Red Sox baseball operations personnel internally discussed concerns that Donnelly was using performance enhancing substances. In an email to vice president of player personnel Ben Cherington dated December 13, 2006, Zack Scott of the Red Sox baseball operations staff wrote of Donnelly: "He was a juice guy but his velocity hasn't changed a lot over the years . . . If he was a juice guy, he could be a breakdown candidate."<sup>427</sup> Kyle Evans of the baseball operations staff agreed with these concerns, responding in an email that "I haven't heard many good things about him, w[ith] significant steroid rumors."<sup>428</sup>

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<sup>427</sup> Email from Zack Scott to Ben Cherington, dated Dec. 13, 2006.

<sup>428</sup> Email from Kyle Evans to Jed Hoyer, Zack Scott, Theo Epstein, Ben Cherington, Craig Shipley, Brian O'Halloran, and Allard Baird, dated Dec. 13, 2006.



In order to provide Donnelly with information about these allegations and to give him an opportunity to respond, I asked him to meet with me; he declined.

*Chad Allen*

Chad Allen is an outfielder who played with four teams in Major League Baseball between 1999 and 2005, the Minnesota Twins, Cleveland Indians, Florida Marlins, and Texas Rangers. Since then, he has played in Japan.

Radomski said that Chris Donnels referred Allen to him.<sup>429</sup> Radomski believed he made between three and five sales to Allen involving Winstrol, testosterone, and Deca-Durabolin. According to Radomski, Allen could not afford human growth hormone.

Allen met with my investigators after his return from Japan, where he played baseball this past season. Allen has been cooperating with federal authorities in connection with their investigations of illegal distribution of performance enhancing substances. As part of his cooperation and at the request of federal law enforcement authorities, Allen agreed to be interviewed by members of my investigative staff. Federal law enforcement agents were present at his interview with us and advised him that any false statements made in their presence during the interview could be considered a violation of federal law.

Allen admitted to having purchased anabolic steroids from Radomski but he said he did so only during the 2003 off-season. In 2001, Allen tore the anterior cruciate ligament in his right knee while playing for the Minnesota Twins. After the injury and subsequent knee surgery, Allen's right leg was weakened and atrophied. In the summer of 2003, Allen discussed this problem with Chris Donnels, who was a teammate at Albuquerque. Donnels described the

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<sup>429</sup> Donnels denied that he introduced Allen to Radomski.

benefits of using Winstrol and mentioned Kirk Radomski. Allen called Radomski at a phone number provided by Donnels.

When Allen called Radomski and described his knee problem, Radomski told him that Winstrol was the best drug for him to take because it would strengthen his joints and build up muscles and ligaments in his leg. Allen recalled obtaining the Winstrol in October after the season was over; he was adamant that he never took steroids during the season. According to Allen, the 2003 off-season was the only occasion when he used steroids. Allen explained that he did not want his teammates to know that he used steroids, and he did not want to use anything during the season because he “did not want to be on a different playing field from his teammates.” He also was concerned about testing positive.

Radomski mailed a one or two-month supply of Winstrol to Allen at his home in Texas. Allen paid Radomski approximately \$400 by check. Allen confirmed that the address and phone number for him in Radomski’s address book were correct. Radomski warned him to stop using the steroids by January 15 to avoid testing positive, and Allen recalled stopping his use well before that date. Allen said that the Winstrol, together with diligent exercise, had a noticeable effect on him. However, the effects of the Winstrol did not last long. He began to see a subtle decline in his leg strength about two months after he stopped using it.

Radomski produced one check from Allen payable to “Kirk Radinski” in the amount of \$140, dated February 1, 2004. A copy is included in the Appendix and is shown

below. Radomski said that this check was payment for ten vials of steroids.

JOHN C. ALLEN

1612

DATE 2/1/04

PAY TO THE  
ORDER OF

Kirk Radinski

\$ 140.00

one hundred forty and 00/100 DOLLARS

MEMO



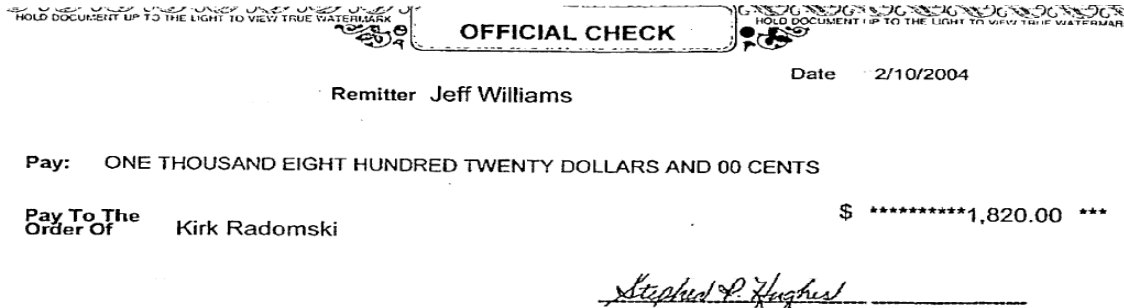
According to Allen, the \$140 check was not for steroids but instead was for an anti-estrogen agent to counteract some of the negative side effects he experienced from using Winstrol. Allen said he experienced a surge in female hormones that resulted in the development of cysts in his chest. Radomski sent him a drug called Femara to counteract that effect.

### *Jeff Williams*

Jeff Williams is a pitcher who played portions of four major league seasons with the Los Angeles Dodgers, from 1999 to 2002. After leaving the Dodgers, Williams went to Japan to continue his playing career.

Radomski said that he sold the steroids Anavar and Dianabol to Williams. Radomski produced one check from Williams dated December 10, 2004 in the amount of

\$1,820. A copy of the check is included in the Appendix and is shown below.



Williams's name, with an address and telephone number, is listed in the address book seized from Radomski's residence by federal agents.

In order to provide Williams with information about these allegations and to give him an opportunity to respond, I asked him to meet with me. He did not respond to my request.

***Howie Clark***

Howie Clark has played several positions for two teams in Major League Baseball since 2002, the Baltimore Orioles and Toronto Blue Jays.

According to Radomski, Clark was introduced to him by Larry Bigbie. Radomski said that Clark called him several times before buying anything. Radomski recalled that Clark had done his own research about human growth hormone and had decided to use it. Radomski said that he made four or five sales of human growth hormone to Clark and that Clark paid him by money order or check.

Radomski produced two money orders received from Clark. They are dated April 7 and May 19, 2005, and totaled \$1,200. One is shown below; both are shown in the Appendix. Radomski stated that these two money orders constituted payment for one kit of human growth hormone.

UNITED STATES POSTAL SERVICE®		POSTAL MONEY ORDER		15-800 000	
92618030575		050516		342420 *700*00	
SERIAL NUMBER	YEAR, MONTH, DAY	POST OFFICE	U.S. DOLLARS AND CENTS		
PAY TO	Kirk Radomski		CHECKWRITER IMPRINT AREA	5570020000	
ADDRESS			FROM	HOWIE CLARK	
C.O.D. NO. OR USED FOR			ADDRESS		
SEE REVERSE WARNING			NEGOTIABLE ONLY IN THE U.S. AND POSSESSIONS		

In order to provide Clark with information about these allegations and to give him an opportunity to respond, I asked him to meet with me; he declined.

***Exavier "Nook" Logan***

Nook Logan is an outfielder who has played in Major League Baseball since 2004 for the Detroit Tigers and Washington Nationals.

Rondell White, a Tigers teammate, referred Logan to Radomski. Radomski stated that he sold Logan one kit of human growth hormone just before federal agents searched Radomski's house in December 2005. Radomski mailed the package to Logan, who paid by money order. Radomski recalled having between six and eight conversations with Logan about the use of performance enhancing substances. In the course of one of these conversations, Logan confirmed that he had received the shipment from Radomski. Radomski still had Logan's phone number in his cell phone directory at the time of his final interview with me and provided me with the phone number.

In order to give Logan the opportunity to respond to these allegations, I asked him to meet with me; he declined.

C. Additional Information Concerning Players' Use of Performance Enhancing Substances

1. Information Provided by a Former Minor League Strength and Conditioning Coach

From 1999 to 2000, Todd Seyler served as a minor league strength and conditioning coach for the Albuquerque Dukes, which was then the class AAA affiliate of the Los Angeles Dodgers. Around May 1999, Seyler began talking with five of the Dukes players about using performance enhancing substances.

The players were Matt Herges, Paul Lo Duca, Jeff Williams, Mike Judd, and Ricky Stone. As already discussed, according to Kirk Radomski, Herges, Lo Duca, and Williams later purchased performance enhancing substances from him. Seyler said that all five players expected to be called up to the Dodgers later in the season, and they all wanted to be in “peak physical condition” when that happened.<sup>430</sup>

Seyler gave Herges a “few hundred dollars” in cash to purchase steroids for him. Seyler understood that the other players were giving Herges money too and that either Herges or Lo Duca would buy steroids for the group from a source in Florida. Seyler did not tell anyone in Dodgers management that he or any of these players were purchasing steroids.

Before a game in mid-July 1999, Seyler and the players met to inject themselves with the steroids. Seyler and Stone lived in the same apartment complex, and Judd, Herges, Lo Duca, and Williams met them at Stone’s apartment with the steroids that had been received from Florida. Seyler recalls Herges as the player who carried the box of steroids into the apartment.

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<sup>430</sup> All but Stone were called up late in the 1999 season. Stone first played in Major League Baseball in 2001 and played with the Cincinnati Reds during a portion of the 2007 season.

The five players and Seyler all injected themselves with the steroids at the apartment. Seyler witnessed Herges and Williams inject themselves in the buttocks with syringes containing Deca-Durabolin. Seyler also observed Lo Duca and Judd inject themselves with either Deca-Durabolin or Winstrol, although Seyler could not remember where they injected themselves or which of the two substances they used. Seyler further observed Stone inject himself in the thigh with Deca-Durabolin. Seyler injected himself in the thigh with Winstrol. Seyler said he was inexperienced in the use of anabolic steroids and needed Herges to explain to him how to perform the injections.

These injections in mid-July 1999 were the beginning of a six-week cycle. In conjunction with the cycles, Seyler designed and recommended training programs for the players to optimize the effect of the steroids. Seyler himself worked out frequently – he took the steroids in part to improve his physical appearance and in part to remain close to the players he was training.

Seyler never observed these players use steroids after the first occasion, but he spoke with them frequently about the subject until all but one of the players were promoted to the Dodgers later during the 1999 season. Based on his conversations with them, Seyler believed that all of the players continued to use steroids while training and that they completed their six-week cycles. They had conversations about steroids at the ballpark, in the clubhouse, during practices, and before and after games. Seyler said that the discussions were “as casual as a conversation about going to the movies.” Seyler believed that he became “desensitized” to any illegality of the use of anabolic steroids because of the frequency and “nonchalant” nature of conversations among him and these players about the use, application and benefits of steroids.

Our efforts to speak with Herges, Lo Duca, and Williams are discussed earlier in this chapter. In order to provide Judd and Stone with information about these allegations and to give them an opportunity to respond, I asked each of them to meet with me. They did not respond to my request.

2. Information Provided by a Former Major League Player

Matt Karchner pitched for two teams in Major League Baseball between 1995 and 2000, the Chicago Cubs and the Chicago White Sox. Members of my investigative staff contacted him as part of our effort to interview former major league players.

Karchner said that during spring training in 1999, he observed two of his Chicago Cubs teammates inject themselves with steroids in an apartment that Karchner was sharing with them. Karchner declined to identify the players. He said that one of the players brought the steroids to the apartment but was afraid of needles and therefore asked the second player to administer the shot. The second player injected the first player with steroids in the buttocks and then injected himself.

Later that season, Karchner was offered steroids by certain of his Cubs teammates. Karchner would not disclose the names of players who offered him steroids, but he said that the conversations he had with them involved the general cost of steroids and discussions of “stacking” to build lean muscle necessary for pitchers. Karchner did not report either of these incidents to anyone at the time.

3. Daniel Naulty

Daniel Naulty pitched for two teams in Major League Baseball from 1996 to 1999, the Minnesota Twins and the New York Yankees.

We contacted Naulty as part of our effort to interview former players. During his telephone interview, Naulty admitted to using steroids, on and off, for seven years, and human



growth hormone for one year. Naulty used performance enhancing substances while playing in both Major League Baseball and in the minor leagues.

Naulty started using steroids as a minor league player, before the 1993 season, because he needed to put on weight. Naulty learned about steroids from other players. After starting his steroid regimen Naulty reported to spring training for the 1993 season approximately 20 pounds heavier and throwing five miles per hour harder than he did the year before. Naulty said that he went “from an A-ball pitcher to a major league prospect in a matter of two years.”

Naulty purchased steroids and human growth hormone through illegal dealers. Naulty was aware of at least four gyms in Orange County, California, where he could obtain steroids.

Naulty believes that his use of steroids made him injury prone. He suffered a number of injuries, including a torn triceps muscle, a torn groin muscle and numbness in an arm from the loss of circulation, that he attributes to his use of steroids. Naulty said that he had stopped using steroids by the time he played for the Yankees in 1999. Naulty lost muscle mass and arm strength once he stopped using steroids.

Naulty repeatedly expressed remorse for using steroids during the course of his interview. He told us that “if I could give back a little bit of something good then I would like to.”

IX. The Threat Posed By Internet Sales of Steroids and Human Growth Hormone

As serious as Kirk Radomski's illegal distribution network was before it was shut down by federal agents, the threat to baseball posed by illegal sales of performance enhancing substances over the internet is greater. In a series of press reports this year, a number of current and former major league players have been implicated in the purchase over the internet of steroids or human growth hormone from illegal purveyors of performance enhancing substances. Undoubtedly, others not yet known also have used the internet to obtain illegal performance enhancing substances.

A. Two Methods for Illegal Internet Distribution of Performance Enhancing Substances

As the result of recent investigations by federal and state law enforcement agencies, two distinct business models for illegal internet sales of performance enhancing substances have been exposed. The first internet distribution method differs only slightly from the traditional model for drug dealing, using the internet instead of gym locker rooms or street corners as a semi-anonymous marketplace for drug transactions. The second pattern is more elaborate, involving "rejuvenation centers" that troll the internet for customers, corrupt physicians who write prescriptions for patients they have not seen, and compounding pharmacies that fill these dubious prescriptions and deliver performance enhancing substances to end users by mail.

1. Drug Dealers' Use of the Internet to Sell Illegal Performance Enhancing Substances

On September 24, 2007, the Drug Enforcement Administration announced the "largest steroid enforcement action in U.S. history," called Operation Raw Deal, in which law enforcement officials from several different federal agencies had executed 143 search warrants,

made 124 arrests and seized 56 illegal steroid labs around the United States. The operation took place in conjunction with enforcement operations in a number of other countries, including China.<sup>431</sup> Operation Raw Deal followed a successful DEA interdiction of illegal steroid production in Mexico in 2005, called Operation Gear Grinder, in which similar evidence was uncovered about how illegal steroids are sold over the internet.<sup>432</sup>

Massive quantities of steroids were seized in the Operation Raw Deal raids, including “11.4 million steroid dosage units” and “242 kilograms of raw steroid powder of Chinese origin.” Agents also seized 27 pill presses from the labs. Agents involved in the raids reported that many of the steroid labs discovered in the operation were “extremely unsanitary” with “huge amounts of raw materials being mixed in bathtubs and bathroom sinks” in some cases.<sup>433</sup>

Indictments in several of the criminal cases arising from these investigations describe the basic sales and distribution methods used by the steroid dealers who were caught by the operation. A number of these dealers advertise on social networking sites; others are listed as “approved sources” for illegal steroids on bodybuilding websites where users discuss how to get illegal steroids and human growth hormone, how to self-administer those substances, and how to avoid detection by law enforcement.<sup>434</sup> Some websites also explain how to convert raw steroid

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<sup>431</sup> Press Release, Drug Enforcement Administration, DEA Announces Largest Steroid Enforcement Action in U.S. History (Sept. 24, 2007); *see also* Amy Shipley, *Agents Arrest 124 in Drug Raids; With Eye on Hosting Olympics, China Cooperates With DEA*, Wash. Post, Sept. 24, 2007, at E1.

<sup>432</sup> *See* Press Release, Drug Enforcement Administration, DEA Leads Largest Steroids Bust in History (Dec. 15, 2005).

<sup>433</sup> *See* Press Release, Drug Enforcement Administration, DEA Announces Largest Steroid Enforcement Action in U.S. History (Sept. 24, 2007).

<sup>434</sup> *See, e.g.*, Indictment, *United States v. Smith, et al.*, No. 07 CR 2580 (S.D. Cal.), ¶¶ 4-5, 15 (d/b/a US Pharmaceuticals); Indictment, *United States v. Russo, et al.*, No. 07 CR 2582

powder into pills or injectable liquid and sell conversion kits for doing so at home.<sup>435</sup>

Transactions were arranged through the dealers' encrypted email addresses to avoid law enforcement scrutiny.<sup>436</sup> Buyers paid for the substances by wire transfer or by mailing cash to post office boxes.<sup>437</sup> The illegal drugs were then sent to the buyers through the mail or using overnight delivery services.<sup>438</sup>

Transactions in which dealers obtained the raw steroid powder from overseas suppliers also frequently were arranged over the internet.<sup>439</sup> The drug dealers caught in Operation Raw Deal obtained raw steroid powder primarily from companies based in China;

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(S.D. Cal.), ¶¶ 4-5, 14 (d/b/a American Pharmaceuticals Incorporated); Indictment, *United States v. Hullander*, No. 07 CR 2577 (S.D. Cal.), ¶¶ 4-5, 8 (d/b/a Tweak Labs); Indictment, *United States v. Lupico*, No. 07 CR 2579 (S.D. Cal.), ¶¶ 4-5, 16 (d/b/a AKA Pharmaceuticals).

<sup>435</sup> See Press Release, Drug Enforcement Administration, DEA Announces Largest Steroid Enforcement Action in U.S. History (Sept. 24, 2007), at 2; see also Amy Shipley, *Agents Arrest 124 in Drug Raids; With Eye on Hosting Olympics, China Cooperates With DEA*, Wash. Post, Sept. 24, 2007, at E1.

<sup>436</sup> See Indictment, *United States v. Russo, et al.*, No. 07 CR 2582 (S.D. Cal.), ¶¶ 10-11, 16 (d/b/a American Pharmaceuticals Incorporated); Indictment, *United States v. Lupico*, No. 07 CR 2579 (S.D. Cal.), ¶ 10 (d/b/a AKA Pharmaceuticals).

<sup>437</sup> See Indictment, *United States v. Smith, et al.*, No. 07 CR 2580 (S.D. Cal.), ¶ 17 (d/b/a US Pharmaceuticals); Indictment, *United States v. Russo, et al.*, No. 07 CR 2582 (S.D. Cal.), ¶ 19 (d/b/a American Pharmaceuticals Incorporated); Indictment, *United States v. Hullander*, No. 07 CR 2577 (S.D. Cal.), ¶ 10 (d/b/a Tweak Labs); Indictment, *United States v. Lupico*, No. 07 CR 2579 (S.D. Cal.), ¶ 18 (d/b/a AKA Pharmaceuticals); Indictment, *United States v. Jin, et al.*, No. 07 CR 121-01ML (D.R.I.), ¶¶ 19, 28-29, 32-34.

<sup>438</sup> See Indictment, *United States v. Russo, et al.*, No. 07 CR 2582 (S.D. Cal.), ¶¶ 17-18 (d/b/a American Pharmaceuticals Incorporated); Indictment, *United States v. Jin, et al.*, No. 07 CR 121-01ML (D.R.I.), ¶¶ 26, 30, 35.

<sup>439</sup> See Indictment, *United States v. Smith, et al.*, No. 07 CR 2580 (S.D. Cal.), ¶¶ 11-12 (d/b/a US Pharmaceuticals); Indictment, *United States v. Hullander*, No. 07 CR 2577 (S.D. Cal.), ¶¶ 4-7 (d/b/a Tweak Labs); Indictment, *United States v. Lupico*, No. 07 CR 2579 (S.D. Cal.), ¶¶ 12-15 (d/b/a AKA Pharmaceuticals); Indictment, *United States v. Jin, et al.*, No. 07 CR 121-01ML (D.R.I.), ¶¶ 17-18. See also David Barboza and Duff Wilson, *Complaint Offers Window on Chinese Drug Ring*, N.Y. Times, Sept. 28, 2007, at C1.

37 Chinese companies were implicated, many of them chemical wholesalers.<sup>440</sup> Illicit production of steroids had shifted to China after the December 2005 raids in Operation Gear Grinder, as a result of which the DEA successfully shut down eight Mexican veterinary steroid producers that previously had been responsible for up to 80% of the illicit internet sales of steroids in the United States.<sup>441</sup>

Once they obtained the raw steroids in powder form, the dealers converted it into steroid pills or injectable liquid steroids in their home laboratories. As mentioned, many of the steroid laboratories raided in Operation Raw Deal were extremely unsanitary. The DEA found that mislabeling was also common, “both intentional and unintentional. Products [we]re often misrepresented, and their safety [was] not at all guaranteed.”<sup>442</sup>

Operation Raw Deal also resulted in the indictment of a number of individuals involved in illicit internet sales of human growth hormone using a similar business model. Human growth hormone was advertised for sale on websites, and potential customers contacted the dealers, using encrypted email addresses that were accessible on those sites. Human growth hormone was purchased by the dealers from a Chinese pharmaceutical company, GeneScience Pharmaceutical Company, Ltd., which shipped vials of its Jintropin brand of HGH from China to post office boxes maintained by the dealers in the United States.<sup>443</sup> Dealers then sent the

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<sup>440</sup> David Barboza and Duff Wilson, *Complaint Offers Window on Chinese Drug Ring*, N.Y. Times, Sept. 28, 2007, at C1; *see also* Maureen Fan and Amy Shipley, *Pressure Builds on China Over Steroids*, Wash. Post, Dec. 5, 2007, at A1.

<sup>441</sup> Amy Shipley, *Agents Arrest 124 in Drug Raids; With Eye on Hosting Olympics, China Cooperates With DEA*, Wash. Post, Sept. 24, 2007, at E1; *see* Press Release, Drug Enforcement Administration, DEA Leads Largest Steroids Bust in History (Dec. 15, 2005).

<sup>442</sup> Press Release, Drug Enforcement Administration, DEA Announces Largest Steroid Enforcement Action in U.S. History (Sept. 24, 2007).

<sup>443</sup> *See* Indictment, *United States v. Jin, et al.*, No. 07 CR 121-01ML (D.R.I.); *see also* David Barboza and Duff Wilson, *Complaint Offers Window on Chinese Drug Ring*, N.Y. Times,

products to their customers. There was no pretense of obtaining physicians' prescriptions for the human growth hormone – the substance was simply smuggled into the United States and sold illegally.

2. Internet Trafficking in Performance Enhancing Substances  
by Rejuvenation Centers and Compounding Pharmacies

In February 2007, a government raid on Signature Compounding Pharmacy in Orlando, Florida shed light on another, more complex method of selling performance enhancing substances illegally over the internet. It involves so-called “rejuvenation centers,” which market steroids or human growth hormone – or, in some instances, merely a healthier lifestyle – over the internet. When approached by a customer, the rejuvenation centers arrange for a corrupt physician to issue a prescription for the substance the customer wants to purchase, often without ever seeing their new “patient” and without administering any medical tests. The bad faith prescriptions are then filled by a compounding pharmacy (which sometimes manufactures the steroids or human growth hormone in its own laboratory) and sent to the user by mail.<sup>444</sup>

The raid on Signature Pharmacy was conducted by a task force of federal and state agencies. It grew out of a 2004 investigation by the New York Bureau of Narcotic Enforcement of a physician in upstate New York who had been illegally prescribing and selling drugs, including steroids, over the internet. That initial investigation led state and federal

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Sept. 28, 2007, at C1. An article that appeared after the Operation Raw Deal announcement reported that GeneScience claimed to be China's most profitable pharmaceutical company and to control nearly 70% of China's market for human growth hormone. *See id.*

<sup>444</sup> The Federal Food, Drug and Cosmetics Act prohibits knowingly distributing or possessing with intent to distribute human growth hormone for any use in humans other than the treatment of disease or another recognized medical condition that has been recognized by the Secretary of Health and Human Services. 21 U.S.C. § 333(e) (2006). The FDA has only approved human growth hormone for limited uses, and it has not been approved for use for any anti-aging, cosmetic, or athletic performance purpose. *See* Food and Drug Administration, Import Alert No. 66-71, Detention Without Physical Examination of Human Growth Hormone, also known as Somatropin (Jan. 23, 2007).

investigators to a compounding pharmacy in Mobile, Alabama called Applied Pharmacy Services that had been the New York physician's source for some of his illegal products. A December 2006 raid on Applied led, in turn, to Signature Pharmacy.<sup>445</sup> In addition to Signature Pharmacy, the multi-agency task force executed search warrants on several other pharmacies, anti-aging clinics, and businesses in Florida and in Alabama, New York, and Texas.

According to investigators, Signature Pharmacy sold more than \$40 million of drugs over the internet in 2006.<sup>446</sup> Mark Haskins, the lead investigator for the New York Bureau of Narcotic Enforcement, described to Sports Illustrated how these operations work:

Basically you have an antiaging clinic with an Internet presence. [Clinic operators] put the product on the Internet. The customer finds them online, fills out a brief questionnaire and requests steroids, hormone therapy, whatever. Someone from the clinic contacts the customer and then develops a prescription for the steroid treatment or hormone treatment. Then [the clinic] sends or e-mails the prescription to a doctor, who is often not even in the same state. He'll sign it [because] he's being paid by the clinic, usually \$20 to \$50 for every signature. The signed prescriptions get faxed to the compounding pharmacies, which know from the very beginning that there is no doctor-patient relationship. The pharmacy then sends the product to the customer.<sup>447</sup>

Other compounding pharmacies also have been raided by the task force. In separate raids of Lowen's Pharmacy in Brooklyn, New York that occurred in May and October

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<sup>445</sup> See Luis Fernando Llosa and L. Jon Wertheim, *Rx for Trouble: Inside the Steroid Sting*, Sports Illustrated, Mar. 12, 2007, at 62.

<sup>446</sup> See Brendan J. Lyons, *A Web of Easy Steroids; Florida Raid Highlights a Lucrative Business*, Albany Times Union, Feb. 28, 2007, at A1.

<sup>447</sup> Luis Fernando Llosa and L. Jon Wertheim, *Rx for Trouble: Inside the Steroid Sting*, Sports Illustrated, Mar. 12, 2007, at 62.

2007, authorities seized over 90 grams of raw human growth hormone, worth over \$7.2 million, as well as significant quantities of raw steroid powder that had been imported from China.<sup>448</sup>

The seizure of large amounts of raw steroids and human growth hormone from these compounding pharmacies suggests that the pharmacies themselves formulated a significant portion of the performance enhancing substances they sold (as opposed to reselling FDA-approved substances purchased from mainstream pharmaceutical companies). Both Lowen's and Signature owned lypholyzers, vacuum freeze dryers that permit a single gram of raw human growth hormone to be converted into thousands of doses of human growth hormone for resale to consumers.<sup>449</sup>

A number of physicians have been indicted as a result of the investigation. Ana Maria Santi may be the most egregious example of the abuses uncovered by the investigation. Santi is a former physician whose license was suspended by New York State in 1999. The suspension did not stop her from writing prescriptions for pay; she merely did so by forging the signature and using the DEA registration number of another physician, Dr. Abdul Almarashi, who was retired and living in a nursing home in California at the time.<sup>450</sup> Between January 2005 and September 2006, Santi issued prescriptions using Dr. Almarashi's name for more than

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<sup>448</sup> See Shawn Assael, *Raid in Brooklyn Nets More Than \$7 Million in Human Growth Hormone*, espn.com, Oct. 16, 2007; *Steroids Are Seized in Brooklyn*, nytimes.com, Oct. 17, 2007; Jennifer 8. Lee, *Illegal Steroids Seized*, N.Y. Times, May 10, 2007, at B6.

<sup>449</sup> News reports suggest that baseball players and other professional athletes typically purchase generally more expensive brand-name human growth hormone that is produced and packaged by mainstream pharmaceutical companies. Some brands are sold in pre-loaded, single use syringes instead of as lypholized powder that must be mixed with sterile water by the user.

<sup>450</sup> Indictment, *United States v. McGlone and Santi*, No. 07 CR 022 (D.R.I.); Indictment of Anna Marie Santi, Albany County Court, New York, File No. 0616252, Jan. 25, 2007; see also Brendan J. Lyons, *Guilty Plea In Steroids Case*, Albany Times Union, Mar. 21, 2007, at A1.



\$150,000 in substances sold by Oasis Longevity and Rejuvenation Institute alone.<sup>451</sup> According to media reports, prescriptions in Dr. Almarashi's name were issued to current major league players Jay Gibbons and Jerry Hairston, Jr., among many other clients.<sup>452</sup>

In a prosecution by the Albany County District Attorney, Santi pleaded guilty to criminal diversion of prescription medications and prescriptions.<sup>453</sup> Thereafter, Santi pleaded guilty to numerous federal counts relating to her illegal distribution of steroids and human growth hormone.<sup>454</sup>

Other physicians engaged in similar practices. Dr. Victor Mariani, a former medical school classmate of Santi, also wrote prescriptions for anabolic steroids and human growth hormone for patients he had never seen in exchange for \$25 per prescription.<sup>455</sup> Dr. Robert Carlson, a 50-year old physician from Sarasota, Florida who is the brother-in-law of one of the owners of the Palm Beach Rejuvenation Center, allegedly signed 3,100 prescriptions

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<sup>451</sup> Dan Goodin, *Guilty Plea in Alleged Internet Steroid Ring*, The Register, Mar. 21, 2007; Brendan J. Lyons, *Guilty Plea in Steroids Case; Ex-Physician Admits Writing Fraudulent Prescriptions for Internet Wellness Center*, Albany Times Union, Mar. 21, 2007, at A1.

<sup>452</sup> Luis Fernando Llosa and L. Jon Wertheim, *Rx for Trouble: Inside the Steroid Sting*, Sports Illustrated, Mar. 12, 2007, at 62; *Documents: Hairston received HGH; Bogus prescriptions at heart of probe; player 'baffled,'* SI.com, Mar. 2, 2007; Luis Fernando Llosa and L. Jon Wertheim, *Gibbons received banned drugs; O's outfielder latest athlete tied to pipeline pharmacy*, SI.com, Sept. 9, 2007.

<sup>453</sup> Brendan Lyons, *Guilty Plea in Steroids Case*, Albany Times Union, Mar. 21, 2007, at A1.

<sup>454</sup> See Plea Agreement, *United States v. Santi*, No. 07 CR 0225 (D.R.I. Apr. 27, 2007). In November 2007, Santi was sentenced to two years in prison, a subsequent year of home confinement and two years of supervised probation, in addition to monetary penalties. Dan Connolly, *Shamed Doctor Gets Two Years in Steroid Case; 'Grandmotherly' Santi Wrote Thousands of Prescriptions*, Balt. Sun, Nov. 3, 2007, at C1.

<sup>455</sup> Indictment, *United States v. Daniel McGlone and Ana Maria Santi*, No. 07 CR 022 (D.R.I.), at 5-7; Plea Agreement, *United States v. Mariani*, No. 07 CR 0215 (D.R.I.).

within a 60-day period; he pleaded guilty in Albany County to fourth-degree insurance fraud.<sup>456</sup>

Dr. Claire Godfrey, an Orlando obstetrician, also pleaded guilty; she said that she was directed by Signature Pharmacy executives to several Florida rejuvenation clinics that faxed prescriptions for her signature knowing that she would never examine the customers.<sup>457</sup> Within a six-month time period, she wrote approximately \$1.3 million worth of prescriptions and earned \$200,000.<sup>458</sup>

B. Alleged Internet Purchases of Performance Enhancing Substances  
By Players in Major League Baseball

Since the initial news reports of the raid by New York and Florida law enforcement officials on Signature Pharmacy and several rejuvenation centers, the names of several current and former major league players have appeared in the media as alleged purchasers of performance enhancing substances through these operations. These include current major league players Rick Ankiel, Paul Byrd, Jay Gibbons, Troy Glaus, Jose Guillen, Jerry Hairston, Jr., Gary Matthews, Jr., and Scott Schoeneweis, and former players David Bell, Jose Canseco, Jason Grimsley, Darren Holmes, John Rocker, Ismael Valdez, Matt Williams, and Steve Woodard.

The Commissioner's Office conducted its own disciplinary interviews of the players who were still active at the time of the reports about their alleged possession or use. Players agreed to the interviews on the condition that the information they provided would not be

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<sup>456</sup> Brendan Lyons, *Guilty Plea in Steroids Case*, Albany Times Union, Mar. 21, 2007; Indictment of Dr. Robert Carlson, et al., Albany County Court, New York, File No. 0616252, Jan. 25, 2007; *see also* Brendan J. Lyons, *Pro Athletes on the Stand?*, Albany Times Union, Mar. 6, 2007, at A1.

<sup>457</sup> Transcript of Eugene Bolton's plea proceedings in Albany County Court, dated Apr. 20, 2007.

<sup>458</sup> Brendan J. Lyons, *Steroid Plea Called Turning Point*, Albany Times Union, July 25, 2007, at A1.

shared with me by the Commissioner's Office. Either directly or in some cases through the Commissioner's Office, I requested each of these 16 current and former players to meet with me to respond to the allegations about them in these reports. Other than Canseco, whose lawyer provided information in response to my inquiry, all of the players either declined or did not respond to my invitation.

***Rick Ankiel***

In a September 7, 2007 article, the New York Daily News reported that Rick Ankiel, an outfielder and former pitcher with the St. Louis Cardinals, had ordered eight shipments of injectable human growth hormone (including HGH sold under the brand names Saizen and Genotropin) from Signature Pharmacy between January and December 2004. Ankiel reportedly had been issued prescriptions for the drugs that were signed by Dr. William Gogan, a physician that the Daily News reported was affiliated with The Health and Rejuvenation Center of Palm Beach Gardens. Ankiel's orders were shipped from Signature Pharmacy to the clinic. One of the owners of the clinic did not deny that the clinic had supplied human growth hormone to Ankiel although he added that "under the current policies in effect, no employee at this center is permitted or authorized to give medication, like HGH, to bodybuilders or professional athletes. That's an absolute no-no."<sup>459</sup>

In comments to reporters after the story was published, Ankiel initially admitted that he had used human growth hormone while recovering from ligament surgery in 2003, but he then invoked medical privacy laws to decline further comment. Ankiel said that "[a]ll and any

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<sup>459</sup> T.J. Quinn, Christian Red, Michael O'Keeffe, and Bill Madden, *Red Faces for Ankiel*, N.Y. Daily News, Sept. 7, 2007, at 90.

medications that I have received in my career has (*sic*) always been under a doctor's care, a licensed physician."<sup>460</sup>

Neither I nor any member of my investigative staff had any prior knowledge of any allegation about Ankiel. The Commissioner's Office met with Ankiel on September 11, 2007 to discuss the allegations.<sup>461</sup> On December 6, 2007, the Commissioner's Office announced that there was insufficient evidence of a violation of the joint program in effect at the time of the conduct in question to warrant discipline of Ankiel.

### ***David Bell***

In a March 6, 2007 article, Sports Illustrated identified David Bell, a former player who spent parts of twelve seasons as an infielder with six different major league teams (the Cleveland Indians, St. Louis Cardinals, Seattle Mariners, San Francisco Giants, Philadelphia Phillies, and Milwaukee Brewers) as one of the customers who appeared in records seized from Applied Pharmacy Services of Mobile, Alabama. According to the article, Bell reportedly purchased six packages of human chorionic gonadatropin ("HCG") from the pharmacy in April 2005 while he was playing for the Philadelphia Phillies.<sup>462</sup> HCG is a hormone that is produced during pregnancy; it is used by steroid abusers to counteract the effects of steroid use on the body's natural production of testosterone.<sup>463</sup>

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<sup>460</sup> Roger Rubin and T.J. Quinn, *Ankiel Spills Juice on Self: Admits Receiving HGH, but on Doctor's Orders*, N.Y. Daily News, Sept. 8, 2007, at 49.

<sup>461</sup> See Pat Borzi, *Ankiel's Troubles Affecting Cardinals*, N.Y. Times, Sept. 15, 2007, at D6.

<sup>462</sup> Luis Fernando Llosa and L. Jon Wertheim, *Rx for Trouble: Inside the Steroid Sting*, Sports Illustrated, Mar. 12, 2007, at 62.

<sup>463</sup> See U. Stenman, et al., *Immunoprocudures for Detecting Human Chorionic Gonadotropin: Clinical Aspects and Doping Control*, 43 *Clinical Chem.* 1293-98 (1997).

Bell's orders of HCG reportedly were prescribed by an Arizona anti-aging clinic. The Sports Illustrated article reported that Bell acknowledged to reporters that he received the drugs but explained that he had received a prescription for them "for a medical condition" that he refused to identify, citing medical privacy laws.<sup>464</sup>

Neither I nor any member of my investigative staff had any prior knowledge of any allegation about Bell.

***Paul Byrd***

On October 21, 2007, the San Francisco Chronicle reported that Cleveland Indians pitcher Paul Byrd had bought nearly \$25,000 worth of human growth hormone and syringes from the Palm Beach Rejuvenation Center, one of the anti-aging clinics implicated in the Signature Pharmacy investigation, in thirteen transactions between August 2002 and January 2005.<sup>465</sup> According to the story, Byrd used his credit card to purchase the substance and received more than 1,000 vials of human growth hormone in the transactions, which were sent to his home in Georgia, to the spring training facility of the Atlanta Braves, where he was playing at the time, and in one instance to a New York hotel.<sup>466</sup>

In public comments in response to the article, Byrd admitted that he had been taking human growth hormone but said that he had been using it to treat a tumor on his pituitary gland. Byrd reportedly said that he had never taken "any hormone or drug that was not

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<sup>464</sup> Luis Fernando Llosa and L. Jon Wertheim, *Rx for Trouble: Inside the Steroid Sting*, Sports Illustrated, Mar. 12, 2007, at 62.

<sup>465</sup> Byrd has played for six different clubs in Major League Baseball since 1995, the New York Mets, Atlanta Braves, Philadelphia Phillies, Kansas City Royals, Los Angeles Angels and Cleveland Indians.

<sup>466</sup> Lance Williams and Mark Fainaru-Wada, *Drug Scandal Hits the Playoffs*, S.F. Chron., Oct. 21, 2007, at A1.

prescribed” to him by a doctor.<sup>467</sup> The Chronicle reported that two of Byrd’s prescriptions had been written by a Florida dentist whose license was suspended in 2003.<sup>468</sup>

Byrd also reportedly said that “[t]he Indians, my coaches and MLB have known that I have had a pituitary gland issue for some time,” but Rob Manfred in the Commissioner’s Office denied that Major League Baseball had given Byrd or any other player a therapeutic use exemption for human growth hormone.<sup>469</sup>

Neither I nor any member of my investigative staff had any prior knowledge of any allegation about Byrd.

### ***Jose Canseco***

The March 6, 2006 Sports Illustrated article reported that Jose Canseco’s name appeared in customer records that had been seized from Applied Pharmacy Services.<sup>470</sup> The article reported that Canseco made purchases in 2004 of human growth hormone (somatropin), testosterone, stanozolol, and HCG, along with 340 syringes using a now-defunct Florida anti-aging clinic called Health Watch. The purchases were shipped to Canseco at his home in California. Canseco could not be reached for comment at the time of the article.<sup>471</sup>

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<sup>467</sup> Jack Curry, *Byrd Admits Using H.G.H. to Treat Tumor*, N.Y. Times, Oct. 22, 2007, at D8.

<sup>468</sup> Lance Williams and Mark Fainaru-Wada, *Drug Scandal Hits the Playoffs*, S.F. Chron., Oct. 21, 2007, at A1.

<sup>469</sup> Anthony McCarron and T.J. Quinn, *MLB Denies Allowing Paul Byrd to Use HGH*, N.Y. Daily News, Oct. 22, 2007.

<sup>470</sup> Luis Fernando Llosa and L. Jon Wertheim, *Rx for Trouble: Inside the Steroid Sting*, Sports Illustrated, Mar. 12, 2007, at 62; *see also Big Names Surface in Drug Sting: Holyfield, Matthews Jr., Canseco Linked as Clients*, SI.com, Feb. 28, 2007.

<sup>471</sup> Luis Fernando Llosa and L. Jon Wertheim, *Rx for Trouble: Inside the Steroid Sting*, Sports Illustrated, Mar. 12, 2007, at 62.

In the article, his lawyer Robert Saunooke reportedly said that he doubted that Canseco was a customer of Applied because he was unaware of his client using the internet for purchases of performance enhancing substances.<sup>472</sup> In a later telephone interview with my investigative staff, however, Saunooke confirmed that Canseco had purchased human growth hormone over the internet on several occasions, both before and after his retirement from baseball. Saunooke said that Canseco had taken a blood test in connection with these purchases. He was not, however, certain of the time frame of these purchases or whether Canseco purchased human growth hormone or other controlled substances from any other internet sites.

### ***Jay Gibbons***

In a September 9, 2007 article, Sports Illustrated reported that Baltimore Orioles outfielder Jay Gibbons was another major league player whose name appeared in Signature Pharmacy client records. According to the article, between October 2003 and July 2005, Gibbons reportedly received six shipments of human growth hormone (Genotropin), two shipments of testosterone, and two shipments of HCG pursuant to prescriptions from South Beach Rejuvenation Center in Miami Beach, Florida that were filled by Signature Pharmacy. The orders were shipped to Gibbons at his home in Arizona.<sup>473</sup>

The article reported that one of the two physicians whose name appeared on Gibbons's prescriptions was A. Almarashi, the retired physician whose name and DEA number were forged by Ana Maria Santi, the former physician who has pleaded guilty to both federal and New York State charges arising from the investigation.<sup>474</sup> Gibbons declined to comment on any

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<sup>472</sup> *Big Names Surface in Drug Sting: Holyfield, Matthews, Jr., Canseco Linked as Clients*, SI.com, Feb. 28, 2007.

<sup>473</sup> Luis Fernando Llosa and L. Jon Wertheim, *Gibbons Received Banned Drugs; O's Outfielder Latest Athlete Tied to Pipeline Pharmacy*, SI.com, Sept. 9, 2007.

<sup>474</sup> *Id.*; see *supra* at 240-41.

of these allegations.<sup>475</sup> Neither I nor any member of my investigative staff had any prior knowledge of these allegations about Gibbons.

In the meetings in October 2003 among Los Angeles Dodgers officials, it was reportedly said that “Gibbons is a guy would have interest in but juice involved there.”<sup>476</sup>

The Commissioner’s Office met with Gibbons on September 18, 2007 to discuss the news reports.<sup>477</sup> On December 6, 2007, the Commissioner’s Office announced a 15-day suspension of Gibbons for violation of the joint drug program, to take effect at the start of the 2008 season. After the suspension was announced, Gibbons said: “I am deeply sorry for the mistakes that I have made. I have no excuses and bear sole responsibility for my decisions. Years ago, I relied on the advice of a doctor, filled a prescription, charged the HGH, which is a medication, to my credit card and had only intended to help speed my recovery from my injuries and surgeries.”<sup>478</sup>

### ***Troy Glaus***

Days before its article about Gibbons, Sports Illustrated reported that the name of Toronto Blue Jays infielder Troy Glaus also had been in Signature Pharmacy customer records.<sup>479</sup> According to the article, between September 2003 and May 2004, Glaus reportedly purchased nandrolone and testosterone from the pharmacy through the New Hope Health Center, a California anti-aging clinic, using prescriptions written by Dr. Ramon Scruggs, a California

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<sup>475</sup> *Id.*

<sup>476</sup> *See supra* at 131 (discussing meetings and notes).

<sup>477</sup> *See* Associated Press, *Baseball Round-up: Phillies Pull Closer to Mets with Win*, N.Y. Times, Sept. 19, 2007, at D5.

<sup>478</sup> *See* Jeff Zrebiec and Dan Connolly, *Gibbons Must Sit for 15 Days*, Balt. Sun, Dec. 7, 2007.

<sup>479</sup> Glaus has played for three clubs in Major League Baseball since 1998, the Anaheim Angels, Arizona Diamondbacks, and Toronto Blue Jays.



physician who was suspended from practice as of March 2007 for issuing prescriptions over the internet. The drugs were shipped to Glaus at his home in California. Glaus declined to comment on these allegations.<sup>480</sup>

Glaus reportedly met with officials from the Commissioner's Office in September 2007.<sup>481</sup> On December 6, 2007, the Commissioner's Office announced that there was insufficient evidence of a violation of the joint program in effect at the time of the conduct in question to warrant discipline of Glaus.

### ***Jason Grimsley***

In its initial reporting on the raid on Signature Pharmacy, the Albany Times Union reported that former Arizona Diamondbacks pitcher Jason Grimsley was one of the pharmacy's customers.<sup>482</sup> Grimsley retired in 2006 after federal authorities seized human growth hormone shipped to his home. As discussed previously, Grimsley reportedly acknowledged in an interview with law enforcement agents that he learned from a former teammate, who was later identified as David Segui, that he could obtain human growth hormone from a "wellness center" in Florida by submitting a blood sample to a specified physician.<sup>483</sup>

### ***Jose Guillen***

In an article on November 6, 2007, the San Francisco Chronicle reported that Seattle Mariners outfielder Jose Guillen purchased human growth hormone, testosterone, and

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<sup>480</sup> Luis Fernando Llosa and L. Jon Wertheim, *Glaus Received Steroids; Pipeline Pharmacy Provided Drugs to All-Star 3B*, SI.com, Sept. 7, 2007.

<sup>481</sup> T.J. Quinn, *MLB Seeks Albany List*, N.Y. Daily News, Sept. 30, 2007, at 63.

<sup>482</sup> Brendan J. Lyons, *A Web of Easy Steroids; Florida Raid Highlights a Lucrative Business*, Albany Times Union, Feb. 28, 2007, at A1.

<sup>483</sup> See Redacted Affidavit of Jeff Novitzky sworn to on May 31, 2006, at 12-13; see also Luis Fernando Llosa and L. Jon Wertheim, *Rx for Trouble: Inside the Steroid Sting*, Sports Illustrated, Mar. 12, 2007, at 62.

other steroids through the Palm Beach Rejuvenation Center in multiple transactions over a three-year period between 2002 and 2004 and possibly also in 2005.<sup>484</sup>

According to the article, Guillen placed his first order with the center on May 1, 2002, when he was playing for the Arizona Diamondbacks. He paid \$2,180 by wire transfer for human growth hormone, testosterone cypionate, nandrolone, and syringes. On September 19, 2003, when he was playing for the Oakland Athletics, he used a credit card to purchase \$2,083 worth of human growth hormone (Genotropin), testosterone propionate, stanozolol, and syringes, which were shipped to him at the Oakland Coliseum. In July 2004, when Guillen was playing for the Anaheim Angels, he “placed a \$6,000 order for [human] growth hormone, testosterone propionate and syringes,” in addition to clomiphene and Novarel. The article also reported that records reflected two additional orders from Guillen for human growth hormone and syringes: in September 2003, when he was playing for Oakland and in June 2005, when he was playing for the Washington Nationals. The article said that it could not be verified from the records the reporters reviewed whether these orders had been sent to Guillen.<sup>485</sup>

The Chronicle article suggested that at least some of Guillen’s purchases of human growth hormone were based on prescriptions that had been written by the same suspended dentist who reportedly wrote prescriptions for human growth hormone for Paul Byrd.<sup>486</sup>

Neither I nor any member of my investigative staff had any prior knowledge of any allegation about Guillen.

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<sup>484</sup> See Mark Fainaru-Wada and Lance Williams, *Baseball’s Drug Scandal Widens; Former Athletic, Giant Among Steroid Clients of Florida Clinic Targeted by Prosecutors*, S.F. Chron., Nov. 6, 2007, at A1.

<sup>485</sup> *Id.*

<sup>486</sup> *Id.*

The Commissioner's Office met with Guillen to discuss the allegations. On December 6, 2007, the Commissioner's Office announced a 15-day suspension of Guillen for violation of the joint drug program, to take effect at the start of the 2008 season. According to news reports, Michael Weiner, the general counsel of the Players Association, said that Guillen would appeal the suspension.<sup>487</sup>

***Jerry Hairston, Jr.***

In an article on March 2, 2007, Sports Illustrated reported that records from Applied Pharmacy showed that Texas Rangers outfielder Jerry Hairston, Jr. received human growth hormone (Genotropin), HCG, and clomiphene citrate from the pharmacy in May 2004. One of Hairston's prescriptions had been written by A. Almarashi, the retired physician whose name frequently was forged by Ana Maria Santi. The article reported that Hairston received the drugs at addresses in both Maryland and Arizona. Hairston denied the report.<sup>488</sup> As previously discussed, Kirk Radomski said that he sold human growth hormone to Hairston in 2003 and 2004.<sup>489</sup>

***Darren Holmes***

In a March 8, 2007 article, Sports Illustrated reported that former pitcher Darren Holmes had purchased human growth hormone (somatropin) and testosterone from the Palm Beach Rejuvenation Center in October 2003, which was shipped to Holmes's home in North

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<sup>487</sup> See Michael S. Schmidt, *2 Players Suspended for Acquiring Steroids and HGH*, N.Y. Times, Dec. 7, 2007.

<sup>488</sup> Luis Fernando Llosa and L. Jon Wertheim, *Documents: Hairston Received HGH; Bogus Prescriptions at Heart of Probe; Player 'Baffled,'* SI.com, Mar. 2, 2007.

<sup>489</sup> See *supra* at 207-08.

Carolina.<sup>490</sup> Holmes reportedly admitted to reporters that he ordered human growth hormone after searching the internet for solutions to his shoulder pain but claimed that he never used it. He also reportedly said that he had not ordered the testosterone that was included in the package, which aroused his suspicion. After discussing whether to use the human growth hormone with his wife, Holmes reportedly said that he “threw the box away and never used it.”<sup>491</sup>

Neither I nor any member of my investigative staff had any prior knowledge of any allegation about Holmes.

***Gary Matthews, Jr.***

On February 27, 2007, the Albany Times Union reported that the name of Los Angeles Angels outfielder Gary Matthews, Jr. appeared on a customer list of Applied Pharmacy Services.<sup>492</sup> Sports Illustrated later reported that Applied customer records showed that in August 2004 Applied shipped Matthews a package of human growth hormone (Genotropin) using a prescription arranged from the “now-defunct” south Florida anti-aging clinic Health Watch (the same clinic connected to Jose Canseco’s purchases). The substances

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<sup>490</sup> See Luis Fernando Llosa and L. Jon Wertheim, *Another Pro Athlete Named; Others Clarify Position*, SI.com, Mar. 8, 2007. Holmes played for eight teams in Major League Baseball between 1990 and 2003: the Los Angeles Dodgers; Milwaukee Brewers; Colorado Rockies; New York Yankees; Arizona Diamondbacks; St. Louis Cardinals; Baltimore Orioles; and Atlanta Braves.

<sup>491</sup> See *id.*

<sup>492</sup> See Brendan J. Lyons, *A Web of Easy Steroids: Florida Raid Highlights a Lucrative Business*, Albany Times Union, Feb. 28, 2007, at A1. Matthews has played for seven teams in Major League Baseball since 1999: the San Diego Padres, Chicago Cubs, Pittsburgh Pirates, New York Mets, Baltimore Orioles, Texas Rangers, and Los Angeles Angels.

were shipped to Matthews at an address in Mansfield, Texas.<sup>493</sup> Reporters learned that the address belonged to a former minor league teammate and friend of Matthews.<sup>494</sup>

Several weeks after the report appeared, Matthews issued a statement in which he said “I have never taken H.G.H., during the 2004 season or any other time. Nobody has accused me of doing so, and no law enforcement agency has said I am a target of any investigation for doing so.” In his statement, Matthews did not deny that human growth hormone had been shipped to him, and he declined to answer reporters’ questions about that omission.<sup>495</sup>

Chad Allen, who was Matthews’ teammate, told my investigative staff that he had allowed Matthews to reside in his condominium in Dallas during the 2004 season while they were both playing for the Texas Rangers. Allen was assigned to the Rangers’ class AAA affiliate during the season, but Matthews and another player continued to live at the condominium. When Allen returned to his condominium after the season, he found unused syringes in a drawer. Allen did not know who left the syringes behind, and he discarded them.

Neither I nor any member of my investigative staff had any prior knowledge of any allegation about Matthews. Matthews met with officials from the Commissioner’s Office in November 2007. On December 6, 2007, the Commissioner’s Office announced that there was insufficient evidence of a violation of the joint program in effect at the time of the conduct in question to warrant discipline of Matthews.

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<sup>493</sup> See *Matthews ordered drug shipment*, SI.com, Feb. 28, 2007; see also Luis Fernando Llosa and L. Jon Wertheim, *Rx for Trouble: Inside the Steroid Sting*, Sports Illustrated, Mar. 12, 2007, at 62; see also *Angels Outfielder Sent HGH from Busted Pharmacy*, SI.com, Feb. 28, 2007.

<sup>494</sup> *Angels Outfielder Sent HGH from Busted Pharmacy*, SI.com, Feb. 28, 2007.

<sup>495</sup> See Jack Curry, *In Statement, Matthews Says He Never Used H.G.H.*, N.Y. Times, Mar. 15, 2007, at D6.

### ***John Rocker***

In March 2007, Sports Illustrated reported that, according to the Applied Pharmacy Services database, former pitcher John Rocker received two prescriptions for human growth hormone (somatropin) between April and July 2003.<sup>496</sup> Rocker initially denied the allegations, but his spokesperson later reportedly said that Rocker had been prescribed human growth hormone in connection with shoulder surgery.<sup>497</sup>

### ***Scott Schoeneweis***

On October 1, 2007, ESPN reported on its website that New York Mets pitcher Scott Schoeneweis had received six shipments of steroids from Signature Pharmacy at Comiskey Park while he was playing for the Chicago White Sox in 2003 and 2004.<sup>498</sup> Dr. Ramon Scruggs of the New Hope Health Center (the suspended California physician who also was reported to have issued prescriptions for Troy Glaus) reportedly prescribed the drugs. According to ESPN, Schoeneweis spent \$1,160 on steroids, including testosterone and stanozolol.<sup>499</sup> Schoeneweis denied the report.<sup>500</sup>

The Commissioner's Office met with Schoeneweis to discuss these allegations.

On December 6, 2007, the Commissioner's Office announced that there was insufficient

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<sup>496</sup> Luis Fernando Llosa and L. Jon Wertheim, *Rx for Trouble: Inside the Steroid Sting*, Sports Illustrated, Mar. 12, 2007, at 62. Rocker played for the Atlanta Braves, Cleveland Indians, Texas Rangers, and Tampa Bay Devil Rays over six seasons between 1998 and 2003.

<sup>497</sup> *Id.*; Michael O'Keefe and T.J. Quinn, *More Rocker Dope*, N.Y. Daily News, Mar. 7, 2007, at 53.

<sup>498</sup> Shaun Assael, *Source: Schoeneweis received 'roids; left denies it*, ESPN The Magazine, Oct. 1, 2007. Schoeneweis has played for five teams in Major League Baseball since 1999: the Anaheim Angels; Chicago White Sox; Toronto Blue Jays; Cincinnati Reds; and New York Mets.

<sup>499</sup> *Id.*

<sup>500</sup> Adam Rubin, *Schoeneweis Denies Report of 'Roid Shipments*, N.Y. Daily News, Oct. 2, 2007, at 52.

evidence of a violation of the joint program in effect at the time of the conduct in question to warrant discipline of Schoeneweis.

***Ismael Valdez***

In an article on November 6, 2007, the San Francisco Chronicle reported that former pitcher Ismael Valdez made a series of purchases in 2002 through the Palm Beach Rejuvenation Center of human growth hormone and several drugs used to counteract the side effects of steroid abuse.<sup>501</sup> Valdez played for seven teams in Major League Baseball between 1994 and 2005, the Los Angeles Dodgers, Chicago Cubs, Anaheim Angels, Texas Rangers, Seattle Mariners, San Diego Padres, and Florida Marlins.

According to the article, on September 7, 2002, while he was playing with the Mariners, Valdez “used a credit to card to buy nearly \$2,500 worth of human growth hormone,” which was shipped to him at the Texas Rangers ballpark in Arlington, Texas where Valdez had been playing until he was traded to the Mariners the prior month. Ten days later, Valdez reportedly purchased Novarel, clomiphene, and Arimidex from the center, all of which are used to counteract the effects of steroid abuse.<sup>502</sup> The article reported that “Valdez’s prescriptions were written by the same dentist who prescribed drugs to [Paul] Byrd, [Jose] Guillen and [retired infielder Matt] Williams.”<sup>503</sup>

***Matt Williams***

In the same November 6, 2007 article that reported on Ismael Valdez and Jose Guillen, the San Francisco Chronicle reported that retired infielder Matt Williams purchased

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<sup>501</sup> See Mark Fainaru-Wada and Lance Williams, *Baseball’s Drug Scandal Widens; Former Athletic, Giant Among Steroid Clients of Florida Clinic Targeted by Prosecutors*, S.F. Chron., Nov. 6, 2007, at A1.

<sup>502</sup> *Id.*

<sup>503</sup> *Id.*

human growth hormone, steroids, syringes, and other drugs from the Palm Beach Rejuvenation Center in 2002, when he was playing with the Arizona Diamondbacks.<sup>504</sup> Between 1987 and 2003, Williams played with the San Francisco Giants, Cleveland Indians, and Arizona Diamondbacks.

According to the article, Palm Beach Rejuvenation Center records show that on March 9, 2002, Williams ordered \$5,693 of testosterone cypionate, human growth hormone, clomiphene, Novarel, and syringes, and on May 8, 2002, Williams ordered \$6,000 worth of testosterone cypionate, nandrolone, clomiphene, Novarel, and syringes. The orders reportedly were sent to Williams at a business address in Scottsdale, Arizona. The article reported that “Williams’ prescriptions were written by the same dentist who prescribed [human] growth hormone for [Paul] Byrd and [Jose] Guillen.”<sup>505</sup>

The article reported that Williams admitted that a doctor told him that human growth hormone might help him heal from an ankle injury that he had suffered in 2002. “He said he learned about the Florida center from a health magazine and went through a battery of tests before obtaining a prescription for growth hormone in 2002.” Williams reportedly said that he did not know that a dentist had written prescriptions for him. He did not comment on whether he had ordered or used steroids or drugs intended for use by women, as reportedly reflected in the records.<sup>506</sup>

Neither I nor any member of my investigative staff had any prior knowledge of any allegation about Williams.

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<sup>504</sup> *Id.*

<sup>505</sup> *Id.*

<sup>506</sup> *Id.*



*Steve Woodard*

In a September 7, 2007 article, the New York Daily News reported that Steve Woodard, a former pitcher who played with four different major league clubs over seven seasons ending in 2003 (the Milwaukee Brewers, Cleveland Indians, Texas Rangers, and Boston Red Sox), received a shipment of steroids and human growth hormone from The Health and Rejuvenation Center, the same Palm Beach Gardens anti-aging center that reportedly supplied St. Louis Cardinals outfielder Rick Ankiel.<sup>507</sup> The article did not state when the shipment to Woodard allegedly occurred.

Neither I nor any member of my investigative staff had any prior knowledge of any allegation about Woodard.

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<sup>507</sup> T.J. Quinn, Christian Red, Michael O’Keefe, and Bill Madden, *Rick Ankiel Received 12-Month Supply of HGH, News Learns*, N.Y. Daily News, Sept. 7, 2007.

X. Review of the Major League Baseball Joint Drug Prevention and Treatment Program

Since 2002, the Major League Baseball Joint Drug Prevention and Treatment Program has been the central focus of efforts by the Commissioner and the Players Association to reduce the use of steroids and other performance enhancing substances by players. As discussed earlier in this report, the program as originally adopted was the product of extended collective bargaining. It was an important first step in the effort to deal with what both parties agreed is a serious problem. Some improvements have been made to the program since program testing began in 2004. Additional improvements are necessary, however, to enable the program to keep pace with the evolving problems of illegal substance use.

The drug testing programs in all sports, including the Olympics, have evolved over time through a process of trial and error, as the programs were modified to address problems and concerns. In that respect, baseball's program has been like all the others. The challenge now is to take the program to a new and higher level and to then continue the process of improvement to deal with the problems and concerns which cannot be foreseen but which inevitably will arise.

There are, of course, substantial differences in how drug testing rules can be imposed between sports that are subject to collective bargaining and those that are not. Commissioner Selig and Rob Manfred discussed this central difference in a 2004 law review article that was referred to earlier in this report:

While it is true that the International Olympic Committee (IOC) and the National Collegiate Athletic Association (NCAA) have implemented broad bans on [nutritional] supplements, the amateur athletes subject to these bans are not employees under the National Labor Relations Act (NLRA) and do not have the ability to resist unilateral implementation of broad drug policies by these regulatory bodies. In professional sports, however, athletes are employees of their clubs and are represented for collective bargaining purposes by unions. The clubs must therefore

bargain over terms and conditions of employment, including any drug policies for, and drug testing of, athletes. Given that positive drug tests can lead to fines, suspensions without pay, or both, it is not at all surprising that unions resist agreements containing broad prohibitions and requiring extensive testing.<sup>508</sup>

Don Fehr of the Players Association has made the related point that major league players rely on baseball for their livelihood while many athletes in Olympic and other sports do not.

Other major professional sports leagues in the United States, including the National Basketball Association, the National Football Association, and the National Hockey League, have adopted drug testing programs through the process of collective bargaining. The programs in effect in these sports provide a basis for comparison and review of the current joint drug program in Major League Baseball.

A. Development of the Essential Elements of an Effective Drug Testing Program

The drug programs currently administered by the World Anti-Doping Agency (“WADA”) and related national agencies such as the United States Anti-Doping Agency (“USADA”) have substantially improved their effectiveness in recent years. But those programs today are the result of an evolution that included a slow initial response to a growing problem followed by further efforts that eventually gained momentum and widespread recognition.

In 1962, following the drug-related death of Danish cyclist Knud Jensen at the 1960 Rome Olympics, the International Olympic Committee (“IOC”) for the first time formally condemned doping in sports. Its first attempts at banned substance control occurred at the 1964 Tokyo Olympics, but comprehensive drug testing was not attempted until the 1972 Munich

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<sup>508</sup> Allan H. Selig and Robert D. Manfred, Jr., *The Regulation of Nutritional Supplements in Professional Sports*, 15 Stan. L. & Pol’y Rev. 35, 35 (2004)

Games.<sup>509</sup> Steroids were added to the prohibited list for the 1976 Montreal Games, and additional substances have been added from time to time, including human growth hormone in 1990.<sup>510</sup>

Throughout the 1990s, various national governing bodies and the United States Olympic Committee (“USOC”) encountered problems arising from their dual responsibilities to promote sport and also to police and sanction those in sport who use banned substances.<sup>511</sup> Programs were criticized as ineffective.<sup>512</sup> In congressional hearings, a USOC official and other critics argued that its drug enforcement efforts should be “externalized.”<sup>513</sup>

Shortly after those hearings, the USOC established USADA, which began operations in 2000. USADA is an independent organization that is empowered to conduct research, educate, test, manage test results, adjudicate, and sanction U.S. athletes in Olympic sports. USADA externalized all aspects of the USOC’s former drug prevention efforts into a self-perpetuating, independent, non-profit corporation; dedicated substantial funds to

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<sup>509</sup> National Center on Addiction and Substance Abuse at Columbia University, *Winning at Any Cost: Doping in Olympic Sports, A Report by the CASA Nat’l Commission on Sports and Substance Abuse*, 45 (Sept. 2000) (“CASA Report”).

<sup>510</sup> *Id.* at 46.

<sup>511</sup> See *Effects of Performance Enhancing Drugs on the Health of Athletes and Athletic Competition: Hearing Before the S. Comm. on Commerce, Science and Transp.*, 106th Cong. 54 (1999) (prepared statement of William Hybl, president of the United States Olympic Committee) (“Hybl 1999 Statement”); CASA Report, at ii.

<sup>512</sup> See CASA Report at i.

<sup>513</sup> Hybl 1999 Statement, at 55; Wadler 1999 Statement, at 86. See also CASA Report, at 48; Ryan Connolly, *Balancing the Justices in Anti-Doping Law: The Need to Ensure Fair Athletic Competition Through Effective Anti-Doping Programs vs. The Protection of Rights of Accused Athletes*, 5 Va. Sports & Ent. L.J. 161, 165-66 (2006).

unannounced testing, research, and education; and provided transparency by issuing annual audited reports of its activities.<sup>514</sup>

Also in 2000, Columbia University's National Center on Addiction and Substance Abuse formed a commission to study performance enhancing substance use in Olympic sports. Its report concluded that: "[t]he evidence is clear: many performance enhancing substances can cause serious harm when used in the methods and levels designed to provide competitive advantage."<sup>515</sup> The commission recommended that drug testing programs include the following characteristics: (1) administration by a truly independent organization with broad authority over testing and sanctioning; (2) comprehensive year-round unannounced testing; and (3) continued research regarding performance enhancing substances and more effective testing methods designed to address changes in doping techniques.<sup>516</sup>

Similarly, in 1999 the IOC established WADA "to coordinate a comprehensive anti-doping program at the international level, laying down common, effective, minimum standards, compatible with those in internationally recognized quality standards for doping controls, particularly with regard to out-of-competition controls, and seeking equity for all athletes in all sports and all countries."<sup>517</sup> A 38-member board of directors is divided equally between individuals affiliated with the sports organizations and those representing governments from around the world (including the United States).

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<sup>514</sup> Doriane Lambelet Coleman, Memorandum Re: *Evaluation of Proposals by IOC and USOC to Reform their Doping Control Programs*, dated Oct. 13, 1999, at 5-6.

<sup>515</sup> CASA Report, at 53.

<sup>516</sup> *Id.* at 3-4.

<sup>517</sup> *Id.* at 47; see Connolly, *supra* note 513, at 165; Wadler 1999 Statement, at 82 ("The athletes' confidence in the public trust has been shaken. We must place the responsibility for drug testing and enforcement of standards in the hands of a structure with unquestioned probity.").

In 2003, WADA published and adopted the WADA Code, which sets forth a uniform and comprehensive set of anti-doping rules, policies, and standards for sport. WADA also developed standards for testing procedures, testing laboratories, managing the results of drug tests, and approval of therapeutic use exemptions (under which the use of performance enhancing substances is allowed for the treatment of certain medical conditions).<sup>518</sup> WADA also publishes a List of Prohibited Substances and Models of Best Practices and Guidelines on these and related issues. The WADA Code was adopted by all Olympic national sports federations before the 2004 Athens Summer Olympic Games.<sup>519</sup>

As a result of this history, certain characteristics are now widely recognized as essential to an effective program to prevent the use of performance enhancing substances in training and competition. These are:

1. independence of the program administrator;
2. transparency and accountability;
3. effective, year-round, unannounced testing;
4. adherence to best practices as they develop;
5. due process for athletes;
6. adequate funding; and
7. a robust education program.<sup>520</sup>

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<sup>518</sup> See Richard L. Hilderbrand, Ph.D., Richard Wanninger, and Larry D. Bowers, Ph.D., *An Update on Regulatory Issues in Antidoping Programs in Sport*, 2 *Current Sports Med. Reports* 226-232, 227 (2003).

<sup>519</sup> Connolly, *supra* note 513, at 165.

<sup>520</sup> Wadler 1999 Statement, at 82-84; *The Necessary Components of an Anti-Doping Agency or Program*, The Duke Conference on Doping, The Center for Sports Law and Policy, Duke University of Law, at 3-4 (May 7-8, 1999).

Programs based on these principles can more readily adapt to changing circumstances in the ongoing contest between athletes who compete clean and those who do not, although even the strongest program cannot by itself entirely eradicate the use of banned substances.

B. Review of the Administration of the Major League Baseball Joint Drug Prevention and Treatment Program

The following review of the current Major League Baseball Joint Drug Prevention and Treatment Program measures it against the elements of an effective program discussed above.

1. Independence

Major League Baseball's joint program was revised in 2006 to create the position of independent program administrator. This reform was a significant positive step, but the program still falls short of true independence.

Before the 2006 revisions, a committee composed of two representatives each from the Commissioner's Office and the Players Association, including one physician appointed by each party, was responsible for overseeing and administering the joint program. At all relevant times, the members of this Health Policy Advisory Committee ("HPAC") were Rob Manfred and Dr. Larry Westreich on behalf of the Commissioner's Office, and Gene Orza and Dr. Joel Solomon on behalf of the Players Association.<sup>521</sup> The drug testing programs in other professional sports leagues, including the NFL, the NBA, and the NHL, also are jointly controlled by the leagues and their respective players associations.

Under the 2006 revisions, certain HPAC responsibilities were delegated to a newly created position of program administrator, including overseeing testing, collection, and

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<sup>521</sup> A fifth member can be appointed by these four members in the event that they are unable to reach a majority decision. The four-member HPAC always has reached agreement, however, and a fifth member never has been appointed.

analysis procedures, and program operational review. In April 2006, Dr. Bryan Wesley Smith, a physician trained in sports medicine who also serves as consultant to the Atlantic Coast Conference, was appointed as the program administrator.

The program administrator may be removed by the Commissioner's Office or the Players Association, or either of them, at any time for any reason.<sup>522</sup> In addition, the Commissioner's Office and the Players Association have retained exclusive authority over the most important aspects of the joint program, including: (1) the number of tests administered (both in-season and during the off-season); (2) the determination of what substances are prohibited; (3) the selection and retention of the entities responsible for the collection and testing of the samples; (4) determinations to order "reasonable cause" testing; and (5) investigating and determining whether a test is considered positive under the joint program.<sup>523</sup>

The Commissioner's Office and the Players Association also retain control over some aspects of the collection process. In those areas in which he does not completely control the collection process, however, Dr. Smith, the independent program administrator, advised us that he can make recommendations to improve the joint program and that none of the several recommendations that he has made has been rejected by the Commissioner's Office and the Players Association.

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<sup>522</sup> Major League Baseball's Joint Drug Prevention and Treatment Program § 1(B)(1) (2006).

<sup>523</sup> *See generally* Major League Baseball's Joint Drug Prevention and Treatment Program (2006). A test that is labeled positive by the testing laboratory might still be considered not to be positive under the joint program for a number of reasons, among them therapeutic use exemptions, chain of custody issues, allegations that a positive test was the result of adulterated supplements, and variations between A and B samples.



## 2. Transparency and Accountability

Transparency is essential to demonstrate the integrity of any drug testing program. In this context, transparency means disclosure of sufficient information about the operation of the program to ensure that it is operated fairly and in accordance with the expectations of interested parties, including fans. The need for transparency must be balanced against a player's right to privacy.

A hallmark of a transparent drug testing program is the issuance of periodic reports of its operations. These reports do not identify individual test results but, in general, disclose the number of tests taken during the year, the number of those tests that were determined by the testing laboratory to be positive, the disposition of each test, the substance found in each positive test, and information regarding other violations of the joint program.

The ability to audit a drug testing program also is essential to show that positive tests are handled appropriately and are not suppressed.<sup>524</sup> In any drug testing program, there are a number of stages at which violations can be ignored or suppressed; this is generally referred to as "results management." For example, if a test is ordered but not taken, an audit should resolve whether the failure to take the test arose from the player's refusal to be tested, which may be a violation of the program and treated as a positive test, or for another, more benign reason. In addition, audits are necessary to demonstrate adherence to the testing protocols necessary to ensure the integrity of the testing process.

Major League Baseball does not provide reports on the joint program's aggregate results and it appears that it never has been audited. The joint program requires that, once CDT

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<sup>524</sup> Report of the Independent Int'l Review Commission on Doping Control – U.S.A. Track & Field, at 5-14 (July 11, 2001).

receives a negative result for a sample, it must immediately destroy all documents relating to that sample. This requirement could impede or prevent an audit.<sup>525</sup>

In August 2006, I requested summaries of aggregate, de-identified data relating to the administration of Major League Baseball's joint program. For the years 2003 through 2005, the majority of the records necessary to compile this data already had been destroyed. Even for the then-ongoing 2006 season, we were advised that the records necessary to respond to certain requests had not been retained.<sup>526</sup>

The mandatory destruction of information relating to negative tests impairs the joint program's transparency and limits the ability to detect the use of steroids. Best practices in steroid testing are now focused on proving steroid use by reference to variations between the results of a number of tests taken over a period of time (referred to as "panel" or "longitudinal" data). This method of proof requires that test result data from prior negative tests be available.<sup>527</sup> The destruction of negative test data also may prejudice players charged with banned substance violations who might turn to longitudinal data to support their defenses to such charges.

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<sup>525</sup> Major League Baseball's Joint Drug Prevention and Treatment Program, Addendum B (2006).

<sup>526</sup> See Letter from Robert D. Manfred Jr. to Sen. George J. Mitchell, dated Mar. 28, 2007.

<sup>527</sup> When a test results suggest the possible use of anabolic steroids but nevertheless does not qualify as a positive test result, WADA procedures require the sample to be reported as "atypical," requiring further investigation and comparison with prior test results or the establishment of a longitudinal profile. Because an individual's ratio of testosterone to epitestosterone will remain relatively consistent from test to test, changes in an individual's T/E ratio might be evidence of anabolic steroid use even if the ratio does not itself establish use. Analysis of longitudinal data also can provide a method to detect steroid use for so-called "designer" steroids; this may provide a method to combat the use of new and otherwise potentially undetectable steroids such as the designer steroid "the clear" that was at the center of the BALCO investigation.

### 3. Frequency of Testing

The third characteristic of a state-of-the-art program is effective, year-round, unannounced testing. Major League Baseball has increased the frequency of random testing since the inception of its joint program. In 2004, the first year in which program testing began, each player was tested once during the regular season on a random, unannounced basis. There were 12 undisputed positive tests; none of the players was suspended because the joint program did not then provide for discipline for a first positive test.<sup>528</sup>

In 2005, 349 tests were administered in excess of the “one test per player” baseline under the joint program. The tests of 12 players were considered positive. Each of those 12 players was suspended for 10 days without pay, which was then the discipline for a first-time positive test for steroids under the program.<sup>529</sup>

Beginning in 2006, testing was increased to a minimum of two tests per player per season. The first was an announced test conducted within five days after the player reported to spring training. The second test was conducted on a randomly-selected date during the season which, beginning in 2006, included the post-season. In addition, up to 600 additional unannounced tests could be conducted at random times during the year. Post-season testing was permitted for the first time, but no post-season tests were administered in 2006. In 2007, post-season testing was conducted for the first time. The 2006 revisions also provided, for the first

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<sup>528</sup> Letter from Robert D. Manfred, Jr. to Sen. George J. Mitchell, dated Mar. 28, 2007, at 6. The tests taken in 2004 (but not later years) were “paired tests” consisting of an initial test followed by a second test taken five to seven days after the initial test. Under this arrangement, the collector advised the player at the time of the initial test to cease using any over-the-counter supplement for at least seven days and, if the player tested positive at the second test taken five to seven days after the initial test, a positive result could not be disputed on the grounds that it was based on the consumption of the over-the-counter supplement.

<sup>529</sup> *Id.* at 8.

time, for up to 60 off-season tests; in fact, 68 players were tested (approximately 1 out of every 18 players).

Two players were deemed to have tested positive for steroids or similar performance enhancing substances in 2006. Both players received 50-game suspensions without pay, which has been the discipline provided for a first-time positive test for steroids under the joint program since the beginning of 2006.<sup>530</sup> To date in 2007, announcements have been made of 50-game suspensions of three players for positive tests and one player based on non-analytic evidence of a violation of the joint program.<sup>531</sup>

The joint program also authorizes “reasonable cause” testing of players suspected of using a prohibited substance. As previously discussed, this provision formalized a previously unwritten understanding between the Players Association and the Commissioner’s Office, and reasonable cause testing for steroids has been used on several occasions both before and after the joint drug program was agreed upon.<sup>532</sup>

Under the NFL drug program, players are subject to drug testing once each season at training camp or whenever the player reports. Thereafter random testing is conducted of ten players for each team each week during the pre-season, regular season, and playoffs. The NFL program does not require any off-season testing but permits it.<sup>533</sup> The NBA program provides

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<sup>530</sup> *Id.* at 9. Jason Grimsley also received a 50-game suspension in 2006 based on “non-analytic” evidence of his use of performance enhancing substances in the form of his reported statements to federal law enforcement agents.

<sup>531</sup> As discussed above, on December 6, 2007 the Commissioner’s Office also announced 15-day suspensions of two players based on information that they had purchased steroids or human growth hormone through rejuvenation clinics.

<sup>532</sup> *See supra* at 47-50.

<sup>533</sup> National Football League Policy on Anabolic Steroids and Related Substances, at § 3 (2007). Neither the NBA nor NHL provide for off-season testing.

for random, unannounced testing of up to 4 times per player per season.<sup>534</sup> NHL players are subject to 2 random, unannounced tests during the pre-season and regular season.<sup>535</sup> Comparison across leagues is difficult because of differences in the language of the programs (some require a specific number of tests per player while others only permit a certain number while not requiring any minimum) and because the details of each policy's implementation are not readily available.<sup>536</sup>

#### 4. Adherence to Best Practices as They Develop

In the context of a drug testing program, "best practices" encompass a wide array of issues. Adherence to best practices is important because administering any drug testing program effectively is a daunting challenge. Negative test results do not assure that the testing program has stopped athletes from using prohibited substances; as the Commissioner's consultant Dr. Gary Green from UCLA has noted, negative test results also might be explained by the use of prohibited substances that cannot be detected, because the substance was eliminated from the body before the test, by collection failures, by the presence of a prohibited substance below testing tolerances, or by the athlete's efforts to evade detection.

Selected issues of particular significance to Major League Baseball's joint program are reviewed below.

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<sup>534</sup> National Basketball Players Association Collective Bargaining Agreement, Art. 33 § 6(a) (1999).

<sup>535</sup> Collective Bargaining Agreement Between National Hockey League and National Hockey League Players Association, Art. 47 § 47.6 (2005).

<sup>536</sup> In a recent article, for example, it was reported that the NFL program does not, in practice, test players on game days and that "at least one day of testing almost always tak[es] place the day after a game." See Michael S. Schmidt, *Doping Experts Find Loopholes Beyond Baseball*, N.Y. Times, Dec. 11, 2007.

a. Collection Issues

Sample collection is an integral part of the drug testing process. Dr. Green has observed that “[t]he laboratory [that analyzes the urine sample] is only as good as the collection process and the entire program can be compromised unless the protocols are well written and adhered to.”<sup>537</sup> There are a number of methods by which athletes with advance notice of a drug test can manipulate their samples to avoid a positive test.<sup>538</sup> The collection procedures under the joint program address many of these potential methods of evasion by, for example, requiring that a witness observe the player when he is providing a sample (to prevent substitution), requiring players to wash their hands before providing a sample (to prevent adulteration of the sample), and screening for specific gravity and pH (to detect attempts to dilute or mask a sample).

Since the beginning of testing in 2003, Comprehensive Drug Testing, Inc. has been responsible for collection of samples in Major League Baseball. When CDT was selected, it already was providing similar services to the minor league testing program established by the Commissioner. In 2005, however, after Dr. Green reviewed the minor league program and reported several problems with CDT’s collection methods to the Commissioner’s Office, CDT was replaced in that program by the National Center for Drug Free Sport.

CDT continues to serve as the sample collector for the Major League Baseball joint program. Its representatives advised us that CDT now has separate workplace and sports collection divisions and uses only independently contracted collectors trained in the sports context for Major League Baseball, thereby addressing two of Dr. Green’s concerns about its work under the minor league program. Rob Manfred told us that CDT has made other

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<sup>537</sup> Gary Green, M.D., *Summary of Anabolic Steroids and Related Compounds*, Prepared for Major League Baseball, Mar. 23, 2006.

<sup>538</sup> An account of the efforts of some violators to avoid detection can be found in *Galabin Boevski v. International Weightlifting Federation*, CAS 2004/A/607.

improvements in performing its responsibilities under the Major League Baseball joint program, and Dr. Bryan Smith also described improvements in collection procedures that have been made since he became the program administrator.

In July 2005, CDT recommended that major league players remain under observation by its personnel from the time they were advised that they would be tested until the actual collection of the specimens. Effective supervision of players after test notification is important for a number of reasons, among them to prevent players from diluting their samples through a variety of means.<sup>539</sup> The Commissioner's Office and the Players Association agreed to observation of players but directed that a club representative should be responsible for monitoring players selected for testing rather than CDT.<sup>540</sup>

This practice was changed again early in the 2007 season, when CDT began staffing its tests with a chaperone in addition to a collector. When the collector and chaperone arrive at a clubhouse, they provide the team representative with a list of the players to be tested – typically between four to eight players, although sometimes as many as ten. The chaperone accompanies the team representative as he notifies the players who have been selected for testing. Each player has up to thirty minutes following notification to check in with the collector.

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<sup>539</sup> Dr. Green advised that diluted samples (those with insufficient specific gravity) usually result from attempts to mask prohibited substances in the player's body. In 2006, 4% of major league drug testing samples were deemed to have been diluted at the testing site, compared with 2% of the minor league testing samples that same year. See Letter from Robert D. Manfred., Jr., to Sen. George J. Mitchell, dated Mar. 28, 2007, at 9; Letter from Robert D. Manfred., Jr., to Charles P. Scheeler, dated Oct. 30, 2007. In a letter, Dr. Christianne Ayotte, the director of the Montreal laboratory that analyzes samples under the program, said that “[w]e have not observed any difference with regards to the proportion of dilute specimens between the samples belonging to MLB and other Olympic sports sent to the INRS (“the Montreal Laboratory”) for analysis.” Letter from Dr. Christianne Ayotte to Sen. George J. Mitchell, dated Dec. 6, 2007.

<sup>540</sup> *Id.*; see Jack Curry, *To Tighten Drug Tests, Teams Are Secretly Monitoring Players*, N.Y. Times, Apr. 1, 2007, at Sports 1 (describing chaperoning by club officials in place prior to mid-2007).

If the player states at check-in that he is unable to provide a sample at that time, he may “go about his regular pre-game activities.” This procedure permits the players to provide samples several hours after the initial notification. The chaperone is responsible for monitoring the players until they provide samples.

One possible difficulty with the arrangement is that CDT chaperones are not permitted to enter the dugout, field of play, or media room, where chaperoned players might go. The Commissioner’s Office believes that minimal risk arises from these limitations because of players’ inability to engage in masking activities in these public areas.

The problem of advance notice is even more challenging for off-season testing. In 2006, 68 samples were collected from players in the off-season pursuant to the joint program.<sup>541</sup> Those players received advance notice of between 24 and 72 hours before the off-season tests. While it is without question more difficult to schedule a test of a player in the off-season, providing up to 72 hours notice could conceivably permit a player who is using banned substances to take steps to avoid a positive test.<sup>542</sup>

b. Prohibited Substances

The WADA Code provides for the publication of a list of prohibited substances that “are prohibited as doping at all times (both in-competition and out-of competition) because of their potential to enhance [athletic] performance.”<sup>543</sup> The list includes categories of banned

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<sup>541</sup> Letter from Robert D. Manfred, Jr. to Charles P. Scheeler, dated Oct. 30, 2007, at 1.

<sup>542</sup> According to Professor McLaren, another collection issue could be the program’s rule requiring samples of less than 78 milliliters to be discarded. If a player’s sample is smaller, it is discarded; if second and third samples similarly are smaller than 78 milliliters, those samples also are discarded and the player is excused from the test for that day. This could permit a concerned player to evade detection.

<sup>543</sup> See WADA, *World Anti-Doping Code*, § 4.2 (Mar. 2003).



substances, including anabolic agents (such as steroids), hormones and related substances, agents with anti-estrogenic activity, and diuretics and other masking agents.<sup>544</sup>

To provide flexibility to address the newly-developed performance enhancing substances, the prohibited list bans substances that are not named specifically but that have a similar chemical structure or similar biological effects. In the case of steroids, the 2007 WADA prohibited list specifies 51 separate steroids by name but also bans the use of “other substances with a similar chemical structure or similar biological effect(s).”<sup>545</sup>

The Major League Baseball joint drug program includes specifically prohibited steroids. Human growth hormone also is listed as a prohibited substance. The program includes a different formulation of a catch-all provision, including among the prohibited list “anabolic steroids that are not covered by Schedule III but that may not be lawfully obtained or used in the United States (including ‘designer steroids’).”<sup>546</sup>

Several types of performance enhancing substances that are included on the WADA prohibited list are not prohibited under the joint program including certain types of diuretics and other masking agents that can be used by athletes to avoid testing positive.<sup>547</sup> Rob Manfred informed us, however, that each year the Montreal Laboratory provides the Commissioner’s Office and the Players Association with the updated list of diuretics and masking agents and tests for them.

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<sup>544</sup> See WADA, *The 2007 Prohibited List for the World Anti-Doping Code*, at 2-7 (Sept. 16, 2006).

<sup>545</sup> *Id.* at 3.

<sup>546</sup> See Major League Baseball’s Joint Drug Treatment and Prevention Program, § 2(B), at 4-5 (2006).

<sup>547</sup> See 2007 WADA Prohibited List, *supra note* 544, at 6. The joint program also places the burden of proof on the independent program administrator to show that a player took a particular masking substance (such as a diuretic) with an intent to avoid accurate testing.

c. Therapeutic Use Exemptions

Beginning in 2006, the program administrator received authority to issue therapeutic use exemptions to players in circumstances where the player is able to produce a medically appropriate prescription for an otherwise banned substance. If the prescribing physician is not the club physician, the player or the outside physician must notify the club physician of the use of the prohibited substance and the issuance of the prescription before any sample is taken.

To be medically appropriate, a prescription must be based on a documented medical need under standards accepted in the United States or Canada. The program administrator may request a player who has tested positive, or the player's physician, to provide documentation of the player's medical need for the prescribed substance. Upon review of the documentation and possible consultation with an expert in the area covered by the prescription, the program administrator reports to HPAC his determination of whether to deem the test result a positive under the joint program.

Although the joint program did not explicitly authorize the grant of therapeutic use exemptions before 2006, Rob Manfred told us that in 2004 and 2005 there was an exemption that was essentially the same as the therapeutic use exemption provisions that exist today.

I asked for the number of therapeutic use exemptions granted each year for performance enhancing substances (without identifying the players involved) because therapeutic use exemptions have been a significant loophole in some drug testing programs.<sup>548</sup> The Commissioner's Office and the Players Association declined to provide that information on the ground that it is considered confidential under the joint program.

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<sup>548</sup> See Robert Weiner and Cael Pulitzer, *Loopholes in Olympic Drug Policy Big Enough to Ski Through*, Seattle Post-Intelligencer, Feb. 10, 2006, at B7.

WADA has developed specific standards for granting therapeutic use exemptions, which the joint program does not expressly include.<sup>549</sup> However, the program administrator, Dr. Smith, advised us that he applies all of the WADA criteria in evaluating requests for therapeutic use exemptions under the joint program other than the requirement that those requests be made before a positive test result.

d. Discipline for Use or Possession of Prohibited Substances

As discussed earlier in this report, the current written provisions of the joint program do not provide for the possibility of discipline based on non-analytic evidence of a violation of the program. However, in 2006, the Players Association and the Commissioner's Office agreed that imposition of a 50-game suspension on Arizona Diamondbacks pitcher Jason Grimsley was permissible under the joint program under the circumstances; the suspension was based on non-analytic evidence of a program violation.<sup>550</sup> Since then, one other player has been suspended for 50 games based on non-analytic evidence of a program violation, and in December 2007, two players were each suspended for 15 days based on non-analytic evidence of past violations.

e. Types of Tests Permitted

Under the joint program, testing violations can be established only as the result of a positive urine test. There currently is no scientifically reliable urine test for human growth

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<sup>549</sup> WADA standards require that: (1) a request for a therapeutic use exemption application must be submitted in advance rather than after a positive drug test; (2) the use must be necessary to treat a chronic medical condition and such that an athlete's health would be significantly impaired if use was not permitted; (3) the exemption would not enhance athletic performance beyond restoring the athlete to normal health; (4) there must not be any reasonable therapeutic alternative to the prohibited substance; and (5) the medical condition being treated must not be a consequence of prior non-therapeutic use of any prohibited substance.

<sup>550</sup> See *supra* at 106-08.

hormone. As a result, the program, like all similar drug testing programs, does not provide an effective deterrent to use of that performance enhancing substance.

As is discussed elsewhere in this report, many players are well aware of this fact. Our discussions with scientists and an informal survey of experts in the field suggest that a valid urine test for human growth hormone is not expected to be developed in the near future. An approved blood test for human growth hormone recently became available, but its limitations are such that its practical utility is doubtful.

As noted previously, the programs in all of the major professional sports leagues in the United States are limited to urine testing. In 2006, the Commissioner's Office funded an ongoing, 3-year study to develop a urine test for human growth hormone.

f. Drug Program Penalties

The severity of penalties is, of course, an important factor in deterrence. Major League Baseball first provided for penalties for failed drug tests under its joint program in 2004. Those penalties were strengthened in two revisions to the program, including imposing suspensions based on a player's first positive test beginning in 2005. Currently, players who test positive for the use of steroids and similar prohibited substances are subject to a 50-game suspension for first-time offenders (30% of the season), a 100-game suspension for second-time offenders, and a permanent ban for third-time offenders. All suspensions are without pay.<sup>551</sup>

The penalties imposed under the joint program are stronger than those imposed under drug programs in other major professional sports leagues in the United States.<sup>552</sup> The current NFL drug policy provides for a four-game suspension without pay (25% of the season)

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<sup>551</sup> Major League Baseball's Joint Drug Prevention and Treatment Program, § 8(H)(2) (2006).

<sup>552</sup> WADA penalties are stronger, requiring a two-year suspension for a first violation.

for a first violation, an eight-game suspension without pay for a second violation, and at least a 12- month suspension without pay for a third violation, with the right to petition for reinstatement after twelve months.<sup>553</sup>

The NBA drug policy prescribes a 10-game suspension without pay for a first violation (12% of the season), a 25-game suspension without pay for a second violation, and a one-year suspension without pay for a third violation. A fourth violation results in immediate dismissal and disqualification.<sup>554</sup> Players who are dismissed may petition for reinstatement after twelve months and are not required to submit to a drug test before being reinstated.<sup>555</sup>

Under the NHL's drug program, the first violation results in a 20-game suspension without pay (25% of the season), the second violation results in a 60-game suspension without pay and the third violation results in permanent suspension from the league.<sup>556</sup>

##### 5. Due Process for Players

Any determination that a player has violated the joint program is subject to review by a three-member arbitration panel.<sup>557</sup> The confidentiality provisions of the program precluded me from reviewing records of such appeal proceedings. As a result, I have not been able to

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<sup>553</sup> National Football League Policy on Anabolic Steroids and Related Substances, § 6 (2007).

<sup>554</sup> National Basketball Players Association Collective Bargaining Agreement, Art. 33, § 9(c) (1999).

<sup>555</sup> *Id.* at Art. 33, § 12(a).

<sup>556</sup> Collective Bargaining Agreement Between National Hockey League and National Hockey League Players Association, Art. 47, §§ 47.2. and 47.7 (2005).

<sup>557</sup> *See* Major League Baseball's Joint Drug Treatment and Prevention Program, § 9 (2006).

assess the operation of those procedures. However, we received no information suggesting that the rights of players were not adequately protected in the operation of the program.

6. Adequate Funding

Major League Baseball budgeted \$3,740,000 for its drug testing program in 2006. This amount included testing under both the major league and minor league programs, and for testing in the Dominican Republic and Venezuela.<sup>558</sup> We did not obtain any information to suggest that cost concerns hindered the operation of the program, and I have been advised by the Commissioner's Office that there is a commitment to provide the necessary funding to operate the program in accordance with its terms.

7. Education

Educational efforts and recommendations for their improvement are discussed in the next chapter.

C. Allegations of Advance Notice of Tests

With the exception of spring training tests, which since 2006 have been required within five days of a player's reporting date, all testing under the joint program is supposed to be random and unannounced. I investigated two allegations of advance notice which, if true, could reflect a serious deficiency in the operation of the program because with enough advance notice a player could evade effective testing.

1. Alleged Advance Notice of 2003 Survey Testing

In an article published on October 16, 2004, Lance Williams and Mark Fainaru-Wada of the San Francisco Chronicle reported statements from a surreptitious recording of a

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<sup>558</sup> Memorandum from Jennifer R. Gefsky to Robert D. Manfred, Jr. Re: 2006 Medical/ Drug Testing Budget, dated Oct. 3, 2005, at 1.

conversation reportedly between Greg Anderson and an unidentified person; the authors repeated those statements in *Game of Shadows*.<sup>559</sup>

According to the article, a voice identified by an unnamed source to be Anderson's is heard on the tape stating:

“We know when they're going to do it,” he would say. “See, the lab that does this stuff is the lab that does . . .” His voice trailed off for a moment. “I'll know like a week in advance or two weeks in advance before they're going to do it,” Anderson continued. “But it's going to be either at the end of May or beginning of June, right before the All-Star break definitely. So . . . after the All-Star break, we're like . . . clear.”<sup>560</sup>

Fainaru-Wada and Williams refused to talk with me, and I could not obtain a copy of the complete recording or otherwise confirm that Anderson made these statements.<sup>561</sup> I also could not confirm that the statements were made “early in the 2003 season,” as the authors reported. However, records that we obtained from the contractor who administered his tests show that Bonds was tested on May 28 and June 4, 2003. Therefore, if the report of this conversation is accurate Anderson correctly predicted the dates of testing, at least for his client Barry Bonds.

Rob Manfred said he learned of these allegations from the original Chronicle report in October 2004.<sup>562</sup> In response, Manfred and representatives of the Players Association asked CDT to investigate the allegations. According to Manfred, CDT did investigate the matter and found no evidence that any CDT employee had been the source of advance notice. CDT

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<sup>559</sup> Lance Williams and Mark Fainaru-Wada, *Bonds Used Steroids in 2003, Trainer Says on Secret Recording*, S.F. Chron., Oct. 16, 2004, at A1.

<sup>560</sup> Lance Williams and Mark Fainaru-Wada, *Game of Shadows* 144 (Gotham Books 2006).

<sup>561</sup> On July 25, 2007, ESPN broadcasted what was reported to be a portion of the recording, but the excerpt it played did not include the statements quoted above.

<sup>562</sup> Lance Williams and Mark Fainaru-Wada, *Bonds Used Steroids in 2003, Trainer Says on Secret Recording*, S.F. Chron., Oct. 16, 2004, at A1.

explained in a conference call with Manfred and a Players Association representative that its collectors received only two days advance notice of when a test would occur and could not have been the source of inside information a week or two in advance of testing. While not “100% satisfied” with CDT’s investigation, Manfred concluded that CDT “had a handle on what was going on.”

My staff interviewed the former CDT contractor who collected samples provided by Barry Bonds in 2003, and the CDT senior sports program manager who selected the players and scheduled the collection. Both of those witnesses denied that Greg Anderson was, or could have been, tipped off in advance of the drug tests administered to Barry Bonds in 2003.

The collector produced faxes from CDT dated May 27 and June 3, 2003, respectively, which advised him of the collections he was to perform of eight Giants players, including Barry Bonds, at PacBell Park the day following his receipt of each fax. He said in his interview that these faxes were the first notice he received that he was to conduct the tests.

The notice to the collector and the players names were provided by the program manager, who said in her interview that she did not select the names of the players to be tested until the day before their tests. She also said that the collector was provided notice of the date and location of the test (but not the team or players to be tested) up to one or two weeks before the test date. She added that Quest Diagnostics, Inc., which analyzed all test samples collected during 2003 testing, did not receive notice of the players who would be tested. Its role was limited to analyzing samples after they were collected.



## 2. Alleged Advance Notice During 2004 Season

I also received allegations that in 2004 some players were provided with advance notice of tests that were supposed to be unannounced. My investigation of those allegations yielded the following information.

In April 2004 federal agents executed search warrants on two private firms involved in the 2003 survey testing, Comprehensive Drug Testing, Inc. and Quest Diagnostics, Inc.; the warrants sought drug testing records and samples for ten major league players connected with the BALCO investigation. In the course of those searches, the agents seized data from which they believed they could determine the identities of the major league players who had tested positive during the anonymous survey testing.<sup>563</sup>

Shortly after these events, the Players Association initiated discussions with the Commissioner's Office regarding a possible suspension of drug testing while the federal investigation proceeded.<sup>564</sup> Manfred said the parties were concerned at the time that test results that they believed until then raised only employment issues had now become an issue in a pending criminal investigation. Ultimately, the Commissioner's Office and the Players Association agreed to a moratorium on 2004 drug testing. While the exact date and length of this moratorium is uncertain, and the relevant 2004 testing records have been destroyed, Manfred stated that the moratorium commenced very early in the season, prior to the testing of any significant number of players. Manfred stated that the Players Association was not authorized to advise its members of the existence of the moratorium.

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<sup>563</sup> See *United States v. Comprehensive Drug Testing, Inc.*, 473 F.3d 915, 920-24 (9th Cir. 2006); see *supra* at 58-59 & n.163.

<sup>564</sup> As mentioned above, the "governmental investigation" provision had not at that time been added to the joint program. It was added in late 2005 as the result of these events.

According to Manfred, the moratorium lasted for a short period. For most players, drug tests then resumed. With respect to the players who the federal agents believed had tested positive during 2003 survey testing, however, the Commissioner's Office and the Players Association agreed that: (1) the Players Association would be permitted to advise those players of this fact, since that information was now in the hands of the government; (2) the testing moratorium would continue with respect to those players until the Players Association had an opportunity to notify them; and (3) the Players Association would not advise any of the players of the limited moratorium.

Sometime between mid-August and early September 2004, Manfred contacted Orza because the Players Association had not yet notified the players involved. The 2004 season was drawing to a close without those players having been tested because they remained under the moratorium. Manfred said that he pressed Orza to notify the players as soon as possible so that they could be tested. All of the players were notified by early September 2004.

A former major league player stated that in 2003 he was tested as part of the survey testing program. He said that in September 2004, Orza told him that he had tested positive in 2003 and that he would be tested in the next two weeks. Independently, Kirk Radomski told us that this former player had earlier told him the same thing about Orza's statements shortly after the conversation between Orza and the former player occurred. In addition, the former player Larry Bigbie told us that the same former player had told him the same thing about his conversation with Orza.

Furthermore, according to Bigbie, in 2004 a current player admitted to Bigbie that he also had been told by a representative of the Players Association that he had tested positive for steroids in 2003.

I am not permitted to identify either the former player with whom we spoke or the current player who made the admission to Bigbie because the Commissioner's Office and the Players Association have concluded that for me to do so would violate the confidentiality provisions of the joint program.

According to the redacted affidavit filed in support of a search warrant sought for Jason Grimsley's residence, Grimsley told federal agents that he, too, was informed that he had tested positive for anabolic steroids in 2003. The identity of the person who so advised Grimsley is redacted in the public version of the affidavit, and I did not have access to the unredacted version.<sup>565</sup>

Other players may have received similar notice, since (1) the program required that each player be tested once during the 2004 season, (2) the Commissioner's Office and the Players Association agreed that, since the government had the names of the players who they believed had tested positive in 2003, those players should be notified and should not be tested in 2004 until that notification had taken place, and (3) that notification did not take place until late August or early September 2004, just weeks before the season ended.

Mr. Orza declined my request for an interview.

The Commissioner's Office emphasized that the circumstances described above represented an emergency response to an unforeseen event: a government investigation that obtained the names of players who federal agents believed had tested positive in the 2003 survey testing, information that the parties had agreed in advance would be anonymous. Consequently, the Commissioner's Office asserts that these events do not describe the normal operation of the program.

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<sup>565</sup> Affidavit of IRS Special Agent Jeff Novitzky in Support of Search Warrant, sworn to on May 31, 2006, at ¶ 16.

The Players Association objected to my making any reference to this matter in this report. I offered to include a statement by the Association and they provided me with the following:

Because of certain actions by the Government in 2004 (which led to litigation, much of which has been under seal), the parties were forced to confront a serious threat to the confidentiality and integrity of our program. To combat that threat, and indeed to save the credibility of our program, the parties undertook certain measures in that year only. These were not unilateral actions undertaken by the MLBPA, but actions discussed and agreed upon between the MLBPA and the Commissioner's Office. Each party was fully aware and in agreement with the steps the other was taking.

The MLBPA believes that, by publishing in this Report anything related to these subjects, Senator Mitchell and the Commissioner's Office are breaching promises of confidentiality made to the MLBPA and to its members.

## XI. Recommendations

To prevent the illegal use of performance enhancing substances in Major League Baseball, I make a series of recommendations. Some can be implemented by the Commissioner unilaterally; some are subject to collective bargaining and therefore will require the agreement of the Players Association.

First, the Commissioner's Office should place a higher priority on the aggressive investigation of non-testing (so-called "non-analytic") evidence of possession or use, enhance its cooperation with law enforcement authorities, and make other improvements designed to keep performance enhancing substances out of major league clubhouses.

Second, Major League Baseball needs a compelling and greatly enhanced educational program that focuses on real-life stories as well as on all the risks involved in the use of performance enhancing substances. These include health risks, career risks, and the many dangers that can result from associating with drug dealers. This program should also give significant attention to the status that major league players enjoy as role models and how their use affects the decisions of young people throughout the country.

I have been warned by a number of former players that some players will use performance enhancing substances no matter what they are told. They may be right. But I also heard from other former players who wrestled long and hard with the decision to use performance enhancing substances. An education program that effectively communicates the messages described above might not deter all players from use, but it surely will deter some.

Third, although it is clear that even the best drug testing program is, by itself, not sufficient, drug testing remains an important part of a comprehensive approach to combatting the illegal use of performance enhancing substances. The Commissioner does not have the authority

to act unilaterally on drug testing, however; the agreement of the Players Association is required. The current joint drug program is part of the Basic Agreement that was agreed to in 2006 and will remain in effect until 2011. Any changes to the program therefore must be negotiated with and agreed to by the Players Association. Neither party is obligated to agree to reopen the Basic Agreement to address the program, even though that is what happened in 2005. There is no way for me to know whether that will happen again.

In recognition of the uncertainties in both the timing of further action on drug testing and in the positions of the parties when that action does take place, I set forth here a set of principles and best practices that presently characterize a state-of-the-art drug testing program. Every program should be updated regularly to keep pace with constantly changing challenges and best practices. It will be for the clubs and the Players Association to decide when to undertake a fresh review of these issues. When they do, I urge them to incorporate the principles described in this report into Major League Baseball's joint drug program.

A. Recommendations for Investigation of Non-Testing Based Allegations of Performance Enhancing Substance Possession or Use

As described elsewhere in this report, the Commissioner's Office has conducted several investigations into allegations of the use of performance enhancing substances by Major League Baseball players.<sup>566</sup> These investigations were limited by a number of restrictions, some self-imposed, some based upon collective bargaining obligations or interpretations of those obligations. As a result, they were in many cases ineffective.

It is imperative that the Commissioner's Office have a more robust investigative ability to respond promptly and effectively to allegations of the illegal use or possession of performance enhancing substances. This report and recent law enforcement efforts show that

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<sup>566</sup> See *supra* at 91-108.

non-analytic evidence of use can be obtained. The Commissioner's Office must vigorously respond when such allegations are made, particularly as violators continue to shift their use to substances such as human growth hormone that are difficult or impossible to detect through currently available testing procedures.

Set forth below are recommendations that, if adopted, should materially enhance that investigative capability. This is critical to effectively identifying and disciplining those players who continue to violate Major League Baseball's rules and policies. These recommendations also are consistent with new approaches to enforcement efforts adopted by anti-doping agencies.<sup>567</sup> One agency head has concluded that drug testing "barely scratches the surface." Accordingly, in addition to a vigilant drug testing program, the Commissioner's Office must also "focus . . . on building detection capability for serious non-analytical anti-doping violations."<sup>568</sup>

1. The Commissioner Should Establish a Department of Investigations

The principal responsibility of the labor relations department of the Commissioner's Office is to oversee the collective bargaining relationship with the Players Association, particularly the periodic negotiation of the Basic Agreement. This responsibility carries with it enormous implications for the financial health of all of baseball. In recent years the labor relations department has performed that role well. Since 1994-95, there have been no work stoppages in Major League Baseball. This fact, perhaps more than any other, explains why Major League Baseball today is on much firmer economic ground than it was just a decade ago.

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<sup>567</sup> Richard Ings, *Australia: Revolutionary Model Battles Doping on all Eight Fronts of the Code*, 1 Play True (World Anti-Doping Agency 2007), at 10.

<sup>568</sup> *Id.*

That primary responsibility, however, also complicates the ability of the labor relations department to meet another of its responsibilities, to investigate allegations of player wrongdoing. The department must maintain good relations with the Players Association; but aggressive, thorough investigations of the alleged possession or use by players of performance enhancing substances may be inconsistent with that objective. Many of the investigations involving performance enhancing substances have not been aggressive or thorough. Before this investigation, with few exceptions, the Commissioner's Office had not conducted investigative interviews of current major league players regarding alleged possession or use of performance enhancing substances, by that player or by others.

The Commissioner's Office security department has been responsible for parts of some investigations into the use or distribution of performance enhancing substances. That department's primary function, however, is to provide security for the players and the playing environment. That also places security officials in a difficult situation when they are asked to investigate the very persons they are responsible for protecting.

The Commissioner should create a Department of Investigations, led by a senior executive who reports directly to the president of Major League Baseball. Ideally, this senior executive should have experience as a senior leader in law enforcement, with the highest credibility among state and federal law enforcement officials; the success of this department will depend in part upon how well it interacts with law enforcement authorities. The senior executive should have sole authority over all investigations of alleged performance enhancing substance violations and other threats to the integrity of the game, and should receive the resources and other support needed to make the office effective.



The Commissioner's Office should establish policies to ensure the integrity and independence of the department's investigations, including the adoption of procedures analogous to those employed by internal affairs departments of law enforcement agencies. The adoption of and adherence to these policies can serve to ensure public confidence that the Commissioner's Office is responding vigorously to all serious allegations of performance enhancing substance violations.

The Commissioner's Office has never published a written policy describing who should receive and act on evidence of possible performance enhancing substance use violations. The Commissioner's Office should adopt a written policy requiring that all information received by club or Commissioner's Office personnel about possible performance enhancing substance use (other than through the drug testing program) must be reported immediately and directly to the senior executive in charge of the Department of Investigations.

In turn, that senior executive should be required to report immediately all significant allegations of player substance use directly to both the Commissioner and the president of Major League Baseball; this has not always happened in the past. Additionally, the Department of Investigations should make quarterly reports to the Commissioner and president describing the Department's investigatory efforts.

The administrator of the drug testing program should also receive any information that, in the view of the senior executive in charge of investigations, might be helpful in tailoring the procedures of the testing program and would not compromise ongoing investigations or, where it is required, confidentiality. For an obvious example, should the Department of Investigations obtain information about possible countermeasures players are taking to avoid

detection on drug tests, such information should be reported immediately to the program administrator.

2. The Commissioner's Office Should More Effectively Cooperate with Law Enforcement Agencies

No matter how skilled, the Commissioner's Office's investigators face significant disadvantages in investigating illegal performance enhancing substance use compared to law enforcement officials. Law enforcement officials, of course, have a broad array of investigatory powers, including search warrants and subpoena power.

Recently, law enforcement agencies have become increasingly flexible and creative in sharing with professional sports organizations information gathered during investigations. This practice makes sense because law enforcement agencies typically focus their efforts in illegal drug investigations on prosecution of the manufacturers, importers, and distributors, not on the athletes who are the end users. During these investigations, however, law enforcement agencies often accumulate evidence of use by individuals.

This is what happened in the prosecution of Kirk Radomski by the United States Attorney's Office for the Northern District of California. As described in this report, the Radomski investigation yielded information regarding performance enhancing substance use by major league players, much of it corroborated by documentary or other evidence.

The appointment of an senior executive in charge of investigations, with an impeccable law enforcement reputation and the resources and authority needed to perform effectively the duties of that office, will be an important first step to improving relations with law enforcement agencies. One law enforcement official advised us in frustration that there is no clearly designated person in the Commissioner's Office to call when law enforcement does have information. The senior executive in charge of investigations would be that person.

Improved relations with law enforcement agencies and customs officials may also serve as a deterrent to substance use by players. The Radomski case, the Signature Pharmacy investigation, and other performance enhancing substance investigations, for example, may have implications beyond the individual players identified in those cases. If nothing else, they serve as a warning to all players that no one is protected from being identified by his supplier. And suppliers may be more wary of supplying professional athletes if they know that sports organizations are aggressively seeking to identify and facilitate the prosecution of those who supply illegal substances to athletes.

3. The Commissioner's Office Should Actively Use the Clubs' Powers, as Employer, to Investigate Violations of the Joint Program

One of the critical tools available to all employers is the investigatory interview. Generally, an employer may compel union-represented employees to attend and truthfully respond during any interview conducted by or on behalf of the employer.<sup>569</sup>

The Ferguson Jenkins arbitration decision has played a role in the interpretation of a player's rights during an investigatory interview.<sup>570</sup> In Jenkins, an arbitrator ruled that the Commissioner could not impose discipline upon Jenkins for refusing to answer questions about alleged possession of drugs of abuse while Jenkins was facing criminal charges for the same conduct.

According to the Commissioner's Office and the Players Association, however, no major league player ever has been convicted of a criminal offense for the use or possession of

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<sup>569</sup> Where the employee reasonably believes the investigatory interview might result in disciplinary action, he has the right to representation at that interview. *See NLRB v. J. Weingarten, Inc.*, 420 U.S. 251, 257 (1975) (“[T]he employee's right to request representation as a condition of participation in an interview is limited to situations where the employee reasonably believe[s] the investigation will result in disciplinary action.”). The Basic Agreement also requires advance notice of such an interview. Basic Agreement, Art. XII(E).

<sup>570</sup> *See supra* at 29-31.

performance enhancing substances. And, as noted elsewhere in this report, the policy of the Department of Justice, and of other prosecutors, is to prosecute the manufacturers, importers, and distributors of performance enhancing substances, not the athletes who use them. Thus, the basis on which the Jenkins arbitrator relied – pending criminal charges against the athlete based on the same conduct – will rarely be an issue.

The Commissioner's Office has these interview rights to ensure that its rules are followed, but before this investigation began active major league players were rarely required to participate in investigatory interviews regarding alleged performance enhancing substance violations. Since this investigation began, however, the Commissioner's Office has conducted a number of interviews of major league players accused of performance enhancing substance violations, and the Commissioner has disciplined some of those players.

Unless there are compelling individual circumstances to the contrary, the Department of Investigations, once established, should promptly seek to interview any player about whom allegations are received of performance enhancing substance violations and insist upon full cooperation. Where law enforcement efforts have been the source of the information, the Department should seek corroboration where possible (for example, records indicating the ordering or receipt of such substances) so that it has evidence to present to the player. This practice would bring Major League Baseball into conformity with other employers.

4. All Clubs Should Have Clear, Written, and Well-Publicized Policies for Reporting Information Relating to Possible Performance Enhancing Substance Violations

Since 1991, Major League Baseball's Drug Policy has covered performance enhancing substances expressly. That policy states in part:

If any club covers up or fails to disclose to [the Commissioner's] office any information concerning drug use by a player, the Club will be fined in

an amount up to \$2 million, the highest allowable amount under the Major League Constitution.<sup>571</sup>

Many club personnel told us that they were not aware of the policy. The Commissioner's Office should actively publicize its policy regarding performance enhancing substances to club personnel and require each club to adopt a uniform, written policy for reporting information about possible substance violations. The club policy should state that any information concerning a player's possible use, possession, or distribution of performance enhancing substances must be reported to a designated club contact immediately. The club contact, in turn, should be required to promptly report all such information to the Department of Investigations.

At least one exception to this reporting requirement should be included in the club policy. Physicians and club athletic trainers should not be required to report such information if to do so would cause them to violate federal or state law relating to the confidentiality of patient communications or information.<sup>572</sup>

To ensure that the clubs are meeting their long-standing obligations to report all information concerning possible possession or use, the Commissioner's Office should require all club personnel with responsibility affecting baseball operations to sign annual certifications. These certifications should affirm that the club employee has no undisclosed, actual knowledge of any possible possession or use of performance enhancing substances by any current major league player. This certification should provide an exception for athletic trainers, to the extent

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<sup>571</sup> See Memorandum from Commissioner Selig to All Clubs Re: Baseball's Drug Policy and Prevention Program, dated Mar. 2, 2005, at 2. The amount of the fine has varied over time.

<sup>572</sup> At the same time, the Commissioner's Office should revise its substance policy to exempt clubs from sanctions for failure to provide other reportable information where the disclosure of such information by a physician or athletic trainer would violate the law.

that they are in receipt of responsive information the disclosure of which would violate the law or the rules of applicable licensing organizations.<sup>573</sup>

In the event of a failure to certify, or should the Commissioner's Office determine that a certification was false, the Commissioner should exercise his discretion under the "best interests of the game" clause to impose discipline appropriate to the circumstances.

5. Logging Packages Sent to Players at Major League Ballparks

In a number of incidents of players' possession or use that have been described in this report, a major league player reportedly received deliveries of performance enhancing substances through clubhouse attendants at Major League Baseball facilities. Kirk Radomski shipped illegal substances to some of his customers at major league clubhouses. Some players who purchased performance enhancing substances through rejuvenation centers also reportedly had the purchases shipped to them at their clubhouses.

We interviewed clubhouse personnel throughout Major League Baseball. It is apparent from those interviews that players receive a significant volume of mail, most of it entirely legitimate, in care of their clubhouse managers. In response to recent news reports that players have received shipments of human growth hormone and other substances from compounding pharmacies at major league ballparks, George Hanna, who is the current director of investigations for the security department in the Commissioner's Office, has suggested that all packages received for players at major league clubhouses be logged.

The Commissioner's Office should require each major and minor league club to establish a system to log every package received for a player at its facilities. These logs should record the sender, the sender's address and phone number, the recipient, the date of delivery, and

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<sup>573</sup> Physicians are typically not club employees, and thus would be exempt from this certification requirement.

the type of package. Copies of these logs should be maintained for a period of time sufficient to aid in any subsequent investigations.

B. Additional Actions to Address Performance Enhancing Substance Violations

There are several other actions that the Commissioner can take to address the issue that do not require collective bargaining.

1. Background Investigations of Prospective Clubhouse Personnel

Kirk Radomski and Luis Perez vividly demonstrate that sources of supply can come from within the clubhouse. The Commissioner's Office must require all clubs to submit to it the names of proposed clubhouse personnel hires for appropriate background checks.

2. Random Drug Testing of Clubhouse Personnel

In 2003, the security department of the Commissioner's Office recommended possible random drug testing of clubhouse personnel in conjunction with its investigation of the Luis Perez incident that is described earlier in this report. Baseball's drug policy has provided for the possibility of random testing of non-playing personnel for decades. Kirk Radomski admitted that he was using steroids while he was a clubhouse attendant with the Mets, a time when he began building the relationships that would ultimately facilitate his distribution of performance enhancing substances to players after he left the Mets.

The 2003 proposal to implement mandatory, random, unannounced drug testing for clubhouse personnel was never adopted, but officials in the security department continue to recommend it. The testing could be conducted in conjunction with testing of major league players under the joint drug program.

3. Hot Line for Reporting Anonymous Tips

Sources both currently and formerly associated with Major League Baseball have suggested that an anonymous hotline or ethics committee for reporting tips may prove useful.

USADA and its counterparts have employed such hotlines for some time and report that they have yielded information that resulted in the detection of drug violations.

4. The Top Draft Prospects Should Be Tested  
Prior to the Major League Draft

The Major League Baseball Scouting Bureau identifies the top 100 draft eligible prospects annually. The scouting bureau has proposed that those prospects be subjected to drug tests before the draft each year. It has had preliminary contacts with the National Collegiate Athlete Association to discuss the feasibility of this proposal.

As with the minor league testing program, unannounced tests will discourage the use of performance enhancing substances from the very beginning of a player's professional career. The testing of draft prospects could be administered as an adjunct of the minor league testing program.

C. Educational and Related Recommendations to Decrease  
Use of Performance Enhancing Substances

Critical to any effort to deter performance enhancing substance use in Major League Baseball is an effective educational program designed to inform players about the dangers of substance use in a way that will resonate with them. Over the last several years, the Commissioner's Office and the Players Association have made an increased effort to provide players and some club personnel with educational materials on performance enhancing substances.

Some of these efforts have been effective. For example, in 2003 the Commissioner's Office hired Dr. Gary Green as a consultant responsible for, among other things, "[d]eveloping and implementing educational programs and materials for Major League and minor league players" regarding "anabolic steroids and [other] performance enhancing



agents.”<sup>574</sup> Dr. Green has done an effective job of educating doctors and other medical personnel on the dangers of performance enhancing substances. The Texas Rangers have retained Dr. Jay Hoffman, Professor in Health and Education Science and a former National Football League player, as a confidential resource for its players regarding performance enhancing substance use.

Additional efforts have included the production of an educational video, in both English and Spanish, that is shown to all players in spring training and the distribution of posters and educational pamphlets. Spring training educational meetings for players have been arranged. Dr. Green also has conducted annual educational sessions for team physicians, athletic trainers, and club employee assistance professionals.

Nevertheless, we heard criticism from both former players and club personnel about the current anti-steroids education programs. Some criticized the perceived shallowness of the efforts, while others could not remember the programs at all, even though they were with clubs when the programs were supposed to have been presented. Plainly, there is much room for improvement.

In contrast, the issues of gambling, other threats to the integrity of the game, and players’ safety receive prominent educational attention. Nearly everyone we interviewed could vividly recall an educational program addressing gambling.<sup>575</sup> Major League Baseball’s

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<sup>574</sup> Dr. Green has a long background in testing for, and education related to, performance enhancing substances, including serving as director of UCLA’s intercollegiate drug testing program, as the chairman of the NCAA’s Subcommittee on Drug Testing and Drug Education, and as a USADA panel member.

<sup>575</sup> The problem of gambling predates the Players Association and collective bargaining by many decades. Gambling by players on the Chicago White Sox was the impetus for the creation of the position of Commissioner of Baseball in 1920. For that reason, the Commissioner can act unilaterally with respect to gambling (although even for gambling his disciplinary powers are subject to the “just cause” limitation of the Basic Agreement).

educational programs regarding player safety include dramatic role playing and memorable personal testimonials that are particularly effective in conveying their messages.

In this section I propose a series of recommendations intended to improve Major League Baseball's performance enhancing substance education program. These recommendations are derived from many of the interviews conducted in this investigation, including interviews of a number of experts who have first-hand experience with educating elite athletes on the dangers of performance enhancing substances.

1. The Design and Implementation of the Educational Program Should Be Centralized with the Independent Program Administrator

As with an effective testing program, an effective educational program must be focused, independent, and transparent. The best and most efficient way to achieve this is to delegate to the independent program administrator the responsibility for designing and implementing the educational program. This will ensure that the program is unbiased and operates consistently with the goals of the testing program. Further, centralizing the educational program will ensure the consistency and effectiveness of its message.

2. Spring Training Programs Should Include Testimonials and Other Speakers and Presentations

As explained above, Major League Baseball does an effective job of communicating its "no gambling" message through testimonials and dramatic role playing. The same methods should be used for performance enhancing substance education as well. The following are examples of such methods that have been used effectively in this area.

Dr. Jay Hoffman is a professor who has written extensively about the effects of performance enhancing substances on the body. Dr. Hoffman also admits that he used anabolic steroids when he played college and professional football during the mid-1980s.

Jamie Reed, head athletic trainer for the Texas Rangers and President of the Professional Baseball Athletic Trainer Society, told us that because Dr. Hoffman is a former athlete, players respond very well to his anti-steroid message and are more open to accept his attestations concerning its use. Other athletic trainers and strength coaches echoed the opinion that Dr. Hoffman is an effective speaker on these issues. For example, Rick Slate, the New York Mets' strength and conditioning coach, identified Dr. Hoffman as a "tremendous help" to the Professional Baseball Strength and Conditioning Coaches Society in formulating its policies.

The Taylor Hooton Foundation was founded in memory of Taylor Hooton, a high school baseball player who committed suicide after taking anabolic steroids. Taylor's father, Don Hooton, created the Foundation and has educated high school and world class athletes around the country about the dangers of performance enhancing substances. Mr. Hooton's message painfully demonstrates that, when major league players use performance enhancing substances, the ramifications go far beyond the players themselves. Whether they like it or not, Major League Baseball players are role models for young athletes, and what they do – right or wrong – affects those young people. Telling the story of Taylor Hooton, and those like him, to players – many of whom are fathers or are considering becoming fathers – will serve to underscore the profound social dangers associated with performance enhancing substance use by high profile athletes.

Law enforcement agency personnel have offered presentations to players during spring training concerning the use of drugs of abuse and gambling, and some individuals we interviewed reported that these talks were memorable. Law enforcement speakers also should be employed to discuss the dangers of performance enhancing substances from their institutional perspective. Law enforcement personnel are uniquely suited to emphasize the criminal

implications of buying, selling, and using these types of substances, and of consorting with those who engage in illegal trafficking.

3. Explain the Health Risks in Context and Provide Education on Alternative Methods to Achieve the Same Results

Most of the performance enhancing substance educational programs we reviewed address the side effects of performance enhancing substance use and the deleterious health effects of long-term use. According to Dr. Hoffman, however, these health risks, although important, generally will not deter a player from using these substances. This is because players who use or are considering using performance enhancing substances do not consider them dangerous if used properly. This view is reinforced when players see that other players who they know are using performance enhancing substances are not experiencing the adverse health effects described in the educational materials.

To counter this skepticism, Dr. Hoffman proposes that, while it is important to educate players about the dangers of performance enhancing substances, it is just as important to educate them on how to achieve the same results through proper training, nutrition, and supplements that are legal and safe. While the clubs have done a better job in recent years of informing players of the importance of fitness and proper nutrition through their strength and conditioning coaches, this message should be delivered in the context of substance use prevention, so that the players understand they can achieve some of the same benefits through training and fitness and, if necessary, legal supplements.

Another health risk associated with performance enhancing substances is the unknown nature and origin of the substances. Players need to be aware of the risks associated with buying black market drugs. Veterinary steroids are sometimes sold illegally to steroid

abusers.<sup>576</sup> Similarly, many of the home laboratories that were raided by the Drug Enforcement Administration as part of its “Operation Raw Deal” in 2007 were unsanitary, with steroids being mixed in bathtubs or bathroom sinks in some instances.<sup>577</sup> An effective education program must highlight the potential health risks associated with taking drugs of unknown origin without a prescription.

4. Players Need to Understand the Non-Health Effects of Buying Performance Enhancing Substances from Street Dealers and “Internet Pharmacies”

In addition to the obvious health risks of using performance enhancing substances of unknown origin, players place their livelihoods and reputations in the hands of drug dealers. The public outcry over the use of performance enhancing substances in professional sports has provided the substance dealer with an opportunity to exploit his relationship with a player. The Commissioner’s Office has been concerned for decades that drug dealers could blackmail a player to alter the outcome of a game in exchange for maintaining the secrecy of the player’s substance use.<sup>578</sup> Such threats to the integrity of the game are as serious as gambling. Major League Baseball’s performance enhancing substance educational program must convey the gravity of these dangers to the reputation and integrity of the players and of the game.

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<sup>576</sup> Many Mexican manufacturers of veterinary steroids altered their production to account for increased demand for human use of steroids in the United States. See George Dohrmann & Luis Fernando Llosa, *Special Report: Steroid Trafficking – the Mexican Connection*, Sports Illustrated, Apr. 24, 2006, at 68. In December 2005, the DEA announced a law enforcement operation, called “Operation Gear Grinder,” in which eight veterinary steroid manufacturers were raided by federal law enforcement authorities. See Press Release, DEA Leads Largest Steroids Bust in History (Dec. 15, 2005); see also Michael O’Keeffe, *Drug Enforcement Administration Steroid Crackdown Hits Home*, N.Y. Daily News, Dec. 18, 2005.

<sup>577</sup> See Press Release, Drug Enforcement Administration, DEA Announces Largest Steroid Enforcement Action in U.S. History (Sept. 24, 2007).

<sup>578</sup> See Memorandum from Commissioner Peter Ueberroth to All Clubs Re: Baseball’s Drug Education and Prevention Program, dated May 14, 1985, at 1.

5. Prominently Display Posters About  
Performance Enhancing Substance Use Prevention

Performance enhancing substance prevention should receive the same educational priority as gambling. Each club should distribute educational materials to players, and each clubhouse, weight room, and training room should prominently display posters about performance enhancing substance use prevention that (1) forcefully articulate Major League Baseball's rule against performance enhancing substance use, (2) inform players of the dangers of performance enhancing substance use, and (3) explain the penalties associated with performance enhancing substance use.

D. Recommendations for Further Improvement of the  
Joint Drug Prevention and Treatment Program

There have been a number of improvements in Major League Baseball's drug testing program since the Joint Drug Prevention and Treatment Program became effective in 2003. Because of the constantly evolving nature of this problem, however, further improvements are necessary.

As noted earlier, the clubs and the Players Association are under no obligation to bargain, or even to discuss the joint program, until the current Basic Agreement expires in 2011. Neither has the authority to change the current program unilaterally.

When the parties do address the drug testing program and related enforcement issues, I urge them to make certain that their program is consistent with the following principles.<sup>579</sup> In the previous chapter, I described a number of concerns that have arisen with

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<sup>579</sup> The principles described below apply only to those aspects of the joint program that are applicable to performance enhancing substances. I am not suggesting modifications to the provisions of the program to the extent that it governs use of other drugs unrelated to athletic performance.

respect to Major League Baseball's joint program. Where applicable, I also described the initiatives adopted by the Commissioner and the Players Association to address these concerns.

It is not necessary for me to recommend even more detailed refinements to the joint program. First, the details of specific operating procedures are best left to the discretion of an independent program administrator who will have the benefit of all the relevant facts as of the time the decision is to be made. Second, any changes in such procedures are likely to have a limited period of utility given the dynamic nature of illegal drug use and of testing programs.

All drug program administrators face a never ending series of challenges, the details of which are often not foreseeable. Accordingly, my recommendations address the principles that parties should adopt in their drug program.

1. The Program Should Be Independent

Independence is the most important principle of an effective drug testing program. The parties previously have recognized the importance of this principle by delegating some of the administrative authority for the program to an independent program administrator. However, under the current program, both the independence of the program administrator and the level of authority that has been delegated to him are limited.

There are a number of methods by which true independence may be achieved. The precise form is for the parties to decide through collective bargaining. The independent program administrator could serve for a substantial fixed term, not subject to removal except for good cause. Alternatively, the parties could establish a self-perpetuating, non-profit corporation that is completely independent of the parties. There may be other alternatives. Whatever form they choose, the independent program administrator should hold exclusive authority over all aspects of the formulation and administration of the program.

It is likely, and understandable, that the Players Association will not agree to relinquish authority over the length of penalties to an independent program administrator. Delegation of that aspect of the program might not be necessary, however, given that the penalties now in effect under the joint program are the strongest of any major professional sports league in the United States.<sup>580</sup>

2. The Program Should Be Transparent

Drug testing programs must respect the privacy rights of the athletes who are tested. Yet to instill public trust and ensure accountability, they must be as transparent as possible consistent with protecting those rights. Transparency can be achieved by such actions as submitting to outside audits, and publishing periodic reports of de-identified aggregate testing results, retaining records of negative test results so that confirmation is available to correctly interpret subsequent tests, which may inure to the benefit of a player charged with a positive result in a later test. A transparent program should provide the public with aggregate data that demonstrates the work of the program and the results achieved by it (but that does not reveal or permit the determination of individual identities).

The importance of transparency is illustrated by an article about the Major League Baseball joint drug program that appeared in the San Diego Union-Tribune in May 2007.<sup>581</sup> The article reported that the number of positive tests reported by the Montreal testing laboratory that is used by Major League Baseball and other organizations increased from around 20 in 2005 to 104 in 2006. Under WADA standards, the laboratory was required to segregate its reported data

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<sup>580</sup> See *supra* at 276-77.

<sup>581</sup> Mark Zeigler, *Report: Stimulant Positive Tests Up; Strong Indication of Use in Baseball*, San Diego Union-Tribune, May 11, 2007.



by sport but not by client, and that laboratory has other clients whose data are included in the laboratory's aggregate baseball/softball data.

Nevertheless, the article drew speculative conclusions from the aggregate data about the effects of including stimulants among the prohibited substances under the joint program, observing that "in the absence of a fully transparent testing program by baseball, the WADA report may be the closest thing to real numbers of positive tests."<sup>582</sup>

3. There Should Be Adequate Year-Round, Unannounced Drug Testing

Adequate year-round, unannounced testing is essential to any effective drug testing program. While strong sanctions for violators are necessary, those sanctions are meaningless unless testing maximizes the chance that violators will be detected. If tests are limited, predictable, or announced in advance, players can avoid detection and evade discipline.

The formulation of what is adequate is best left for determination by a truly independent program administrator. It is likely that the appropriate amount of testing, allocations between in-season and out-of-season testing, and allocation of resources between targeted and random testing will not be static.

4. The Program Should Be Flexible Enough to Employ Best Practices as They Develop

A state of the art drug testing program must employ best practices as they develop. Just as the methods that violators employ to avoid detection are not static, neither are these best practices. This may involve modification of the program as enhanced techniques, new tests, and best practices evolve.

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<sup>582</sup> *Id.*

5. The Program Should Continue to Respect the Legitimate Rights of Players

While I believe that changes are necessary to make the drug testing program more effective, there is nothing inconsistent between my recommendations and continued respect for the legitimate privacy and due process rights of players. The principles upon which I have based my analysis of the current program and my recommendations require that an effective drug testing program recognize the legitimate privacy and due process rights of all players. Although there obviously have been some differences and disagreements in recent years, the parties generally appear to have respected players' rights, and I recommend that any changes to the program in the future continue to recognize and respect the legitimate rights of players.

6. The Program Should Have Adequate Funding

A meaningful program requires the funding necessary to be effective. It would be contrary to Major League Baseball's and the Players Association's self-interests to deny needed resources to a truly independent program.

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These recommendations are designed to work in combination with one another to create a new environment, one that is more aggressive in deterring the use of performance enhancing substances, while still protecting the rights of the players. I believe that the principal beneficiaries of these reforms will be the majority of major league players who play clean and follow the rules. These players have been harmed by having to play against violators who gained an unfair advantage, and further harmed by having the legitimacy of their fairly-earned accomplishments frequently questioned. The clean major league players deserve far better than they have had to endure.

E. We Need to Look to the Future

All of these recommendations are prospective. The onset of mandatory random drug testing, the single most important step taken so far to combat the problem, was delayed for years by the opposition of the Players Association. However, there is validity to the assertion by the Players Association that, prior to 2002, the owners did not push hard for mandatory random drug testing because they were much more concerned about the serious economic issues facing baseball.

To prolong this debate will not resolve it; each side will dig in its heels even further. But it could seriously and perhaps fatally detract from what I believe to be a critical necessity: the need for everyone in baseball to work together to devise and implement the strongest possible strategy to combat the illegal use of performance enhancing substances, including the recommendations set forth in this report.

I was asked to investigate the use of performance enhancing substances by major league players and to report what I found as fairly, as accurately, and as thoroughly as I could. I have done so.

Only the Commissioner is vested with authority to take disciplinary action. Any such determination is properly for the Commissioner to make, subject to the players' right to a hearing.

I urge the Commissioner to forego imposing discipline on players for past violations of baseball's rules on performance enhancing substances, including the players named in this report, except in those cases where he determines that the conduct is so serious that discipline is necessary to maintain the integrity of the game. I make this recommendation fully aware that there are valid arguments both for and against it; but I believe that those in favor are compelling.

First, a principal goal of this investigation is to bring to a close this troubling chapter in baseball's history and to use the lessons learned from the past to prevent the future use of performance enhancing substances. While that requires us to look back, as this report necessarily does, all efforts should now be directed to the future. That is why the recommendations I make are prospective. Spending more months, or even years, in contentious disciplinary proceedings will keep everyone mired in the past.

Second, most of the alleged violations in this report are distant in time. For current players, the allegations of possession or use are at least two, and as many as nine years old. This covers a period when Major League Baseball made numerous changes in its drug policies and program: it went from limited probable cause testing to mandatory random testing; since 2002, the penalties under the program have been increased several times; human growth hormone was not included as a prohibited substance under the joint drug program until 2005. Under basic principles of labor and employment law, an employer must apply the policies in place at the time of the conduct in question in determining what, if any, discipline is appropriate. Until 2005, there was no penalty for a first positive drug test under the joint drug program, although the Commissioner has always had the authority to impose discipline for "just cause" for evidence obtained outside of the program.<sup>583</sup>

Third, and related, more than half of the players mentioned in this report are no longer playing in Major League Baseball or its affiliated minor leagues and thus are beyond the authority of the Commissioner to impose discipline.

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<sup>583</sup> It should be noted, however, that the rule that there would be no discipline for the first positive test was part of the quid pro quo for the Players Association's agreement to mandatory random drug testing. Indeed, the Basic Agreement protects a "First Positive Test Result" from discipline but does not similarly protect the first use of steroids from discipline. The primary evidence of wrongdoing in this report was not obtained from baseball's testing program but rather from an independent investigation.

Fourth, I have reported what I learned. But I acknowledge and even emphasize the obvious: there is much about the illegal use of performance enhancing substances in baseball that I did not learn. There were other suppliers and there have been other users, past and present. Many of those named in this report were supplied by Kirk Radomski. Yet plainly he was not the only supplier of illegal substances to major league players. Radomski himself said that some players told him they had other sources. And the evidence demonstrates that a number of players have obtained performance enhancing substances through so-called “rejuvenation centers” using prescriptions of doubtful validity.

Fifth, the Commissioner promised, and I agreed, that the public should know what I learned from this investigation. Perhaps the most important lesson I learned is that this is a serious problem that cannot be solved by anything less than a well-conceived, well-executed, and cooperative effort by everyone involved in baseball. From my experience in Northern Ireland I learned that letting go of the past and looking to the future is a very hard but necessary step toward dealing with an ongoing problem. That is what baseball now needs.

The Commissioner should give the players the chance to make a fresh start, except where the conduct is so serious that he must act to protect the integrity of the game. This would be a tangible and positive way for him to demonstrate to the players, to the clubs, to the fans, and to the general public his desire for the cooperative effort that baseball needs to deal effectively with this problem. It also would give him a clear and convincing basis for imposing meaningful discipline for future violations.

## XII. Conclusions

There has been a great deal of speculation about this report. Much of it has focused on players' names: how many and which ones. After considering that issue very carefully I concluded that it is appropriate and necessary to include them in this report. Otherwise I would not have done what I was asked to do: to try to find out what happened and to report what I learned accurately, fairly, and thoroughly.

While the interest in names is understandable, I hope the media and the public will keep that part of the report in context and will look beyond the individuals to the central conclusions and recommendations of this report. In closing, I want to emphasize them:

1. The use of steroids in Major League Baseball was widespread. The response by baseball was slow to develop and was initially ineffective. For many years, citing concerns for the privacy rights of the players, the Players Association opposed mandatory random drug testing of its members for steroids and other substances. But in 2002, the effort gained momentum after the clubs and the Players Association agreed to and adopted a mandatory random drug testing program. The current program has been effective in that detectable steroid use appears to have declined. However, that does not mean that players have stopped using performance enhancing substances. Many players have shifted to human growth hormone, which is not detectable in any currently available urine test.

2. The minority of players who used such substances were wrong. They violated federal law and baseball policy, and they distorted the fairness of competition by trying to gain an unfair advantage over the majority of players who followed the law and the rules. They – the players who follow the law and the rules – are faced with the painful choice of either being placed at a competitive disadvantage or becoming illegal users themselves. No one should have to make that choice.

3. Obviously, the players who illegally used performance enhancing substances are responsible for their actions. But they did not act in a vacuum. Everyone involved in baseball over the past two decades – Commissioners, club officials, the Players Association, and players – shares to some extent in the responsibility for the steroids era. There was a collective failure to recognize the problem as it emerged and to deal with it early on. As a result, an environment developed in which illegal use became widespread.

4. Knowledge and understanding of the past are essential if the problem is to be dealt with effectively in the future. But being chained to the past is not helpful. Baseball does not need and cannot afford to engage in a never-ending search for the name of every player who ever used performance enhancing substances. The Commissioner was right to ask for this investigation and report. It would have been impossible to get closure on this issue without it, or something like it.

5. But it is now time to look to the future, to get on with the important and difficult task that lies ahead. Everyone involved in Major League Baseball should join in a well-planned, well-executed, and sustained effort to bring the era of steroids and human growth hormone to an end and to prevent its recurrence in some other form in the future. That is the only way this cloud will be removed from the game. The adoption of the recommendations set forth in this report will be a first step in that direction.

## Appendix A

### Independence of the Investigation

There are a number of activities and current or former relationships that existed between me or my law firm, DLA Piper US LLP, and various potentially interested persons or entities. I am confident that none of these matters affected my ability to conduct an investigation that was thorough, impartial, and fair. Among those are the following:

- I have been a consultant to the owners of the Boston Red Sox since that club was acquired in 2002 by an ownership group led by John W. Henry. The club labels that position “director.” I am not and have never been involved in any way in baseball operations, and I have no vote on any decisions by the owners. I do not now hold, nor have I in the past ever held, any ownership or other equity interest in the Red Sox.
- From 1995 until the end of 2006, I was a director and, from March 2004, the chairman of the board of directors of The Walt Disney Company, a diversified media company that among other businesses owns ABC, Inc. and its majority owned subsidiary ESPN, Inc. Until 2003, Walt Disney owned the Anaheim Angels (now the Los Angeles Angels).
- For approximately one year beginning in September 2000 I served on the board of directors of the Florida Marlins. I did not hold, nor have I in the past ever held, any ownership or other equity interest in the Marlins.
- I served as a member of the Blue Ribbon panel on baseball economics, which issued a report on that subject in July 2000. The other members of that panel were Richard C. Levin, Paul A. Volcker, and George F. Will.
- During 2004, a lawyer in the Las Vegas office of DLA Piper (then called Piper Rudnick LLP) acted as local counsel for the Major League Baseball Players Association in an action filed by that Association regarding the federal government’s seizure of records concerning anonymous drug testing of players in Major League Baseball that was conducted pursuant to the Basic Agreement during 2003. The firm’s involvement ended in September 2004, even though the litigation continued after that date. I was not involved in that case in any way and was not aware of it prior to this investigation.

My firm’s prior involvement as local counsel for the Players Association also required us to discuss with that organization my appointment to conduct this investigation. As a



result of those discussions, the Players Association consented to my appointment, and to my use of DLA Piper lawyers to assist me.

*Role of Foley & Lardner LLP.* At the March 30, 2006 press conference announcing my appointment, the Commissioner introduced two lawyers from Foley & Lardner LLP who would also be involved in the investigation. Foley & Lardner regularly represents the Commissioner and Major League Baseball in a variety of legal matters. Before joining the Commissioner's Office in 1998, Robert A. DuPuy, who is the president and chief operating officer of Major League Baseball, was a partner at the Foley firm and in that position served as outside counsel to the league in a number of matters.

From the outset of this investigation, I recognized the importance of my interviewing the Commissioner to determine his own awareness of the use of performance enhancing substances in baseball and the steps that were taken in response to that awareness. For this reason, and in order to avoid even the appearance of bias, the Commissioner, Foley & Lardner and I agreed that lawyers from the Foley firm would not serve as members of my investigative team, and they have not done so. From the outset of this investigation, Foley & Lardner has performed a distinct and important role as counsel for the Commissioner's Office.

## Appendix B

### Process of the Investigation

On March 30, 2006, Commissioner Selig announced this independent investigation into the illegal use of performance enhancing substances in Major League Baseball. As discussed earlier in this report, he asked me “to attempt to determine, as a factual matter, whether any Major League players associated with BALCO or otherwise used steroids or other illegal performance enhancing substances at any point after” the 2002 Basic Agreement was entered into. In his announcement, Commissioner Selig also recognized that “[i]t may be that conduct before the effective date of the 2002 Basic Agreement will prove helpful in reaching the necessary factual determinations,” and he therefore authorized me to follow the evidence wherever it may lead.

The Commissioner agreed that I would have “all of the investigatory powers available to the Commissioner” for the purposes of the investigation and that I would have “full discretion with respect to the means and manner of carrying out this investigation.”

The Commissioner and the thirty major league clubs are subject to the provisions of the Basic Agreement with the Players Association. This imposes certain limitations upon actions that the Commissioner can take with respect to current players, and to the disclosure of information arising out of the Major League Baseball Joint Drug Prevention and Treatment Program. The Commissioner retained the authority to determine whether particular activities in the course of this investigation might violate his obligations. I agreed to be bound by his decisions, but I retained the right to state in my report if I disagreed with any such decisions.

I also agreed that the Commissioner’s Office would have the right to review my report three business days in advance of its release to the public to make certain that I did not improperly include in it any information that is required to be kept confidential. I retained,

however, “unhindered discretion to include in... [the] report whatever information [I] deemed appropriate” subject only to the Commissioner’s right to instruct me to not include information that the Commissioner concluded he was under a legal duty to keep confidential. The Commissioner’s Office reviewed this report before it was released. No material changes were made to the report as a result of that review.

#### The Investigative Team

I retained DLA Piper US LLP to assist me in this investigation. DLA Piper, in turn, retained FTI Consulting, Inc. to assist with the collection and search of electronic records from the Commissioner’s Office and a number of the clubs. DLA Piper also retained three expert consultants who provided advice in preparing this report and in developing its conclusions: Richard V. Clark M.D., Ph.D.; Professor James J. Heckman, Ph.D.; and Professor Richard H. McLaren, HBA, LL.B., LL.M., C.Arb.

Dr. Clark is a research director for a large pharmaceutical company. He is a respected expert in endocrinology and andrology who has served in leadership positions with several professional societies in those fields, including the American Society of Andrology. He has authored a number of articles on studies in endocrinology and andrology and he has peer reviewed other articles.

Mr. McLaren is a Professor of Law at the University of Western Ontario who also serves as a sports arbitrator. He is a member of the independent Court of Arbitration for Sport. He served as an on-site arbitrator for the Winter Olympic Games in 1998 and 2006, the Summer Olympic Games in 2000 and 2004, and the Commonwealth Games in 2002, and will be an on-site arbitrator at the 2008 Summer Olympic Games in Beijing.

Dr. Heckman is the Henry Schultz Distinguished Service Professor in Economics at the University of Chicago. He is a fellow of the Econometrics Society and a member of the Academy of Arts and Sciences and of the National Academy of Sciences. Dr. Heckman's work has been widely published.

Dr. Heckman and his colleagues at Lexecon, Inc. were retained to conduct a study of aggregate, non-identifiable data derived from spring training physical examinations to evaluate trends in certain data, such as cholesterol levels, that can indicate the use of anabolic steroids. Every player undergoes a spring training physical examination that includes a comprehensive blood test. Dr. Heckman proposed constructing statistical models involving these indicators and using "latent variable analysis" to estimate levels of anabolic steroid use in Major League Baseball over time. In 2000, Dr. Heckman was the co-recipient of the Nobel Memorial Prize in Economic Sciences for his work on latent variable analysis.

All medical data to be used in this study was to be "de-identified," that is, stripped of all information from which a player could be identified. Nevertheless, some of the clubs and the Players Association raised concerns as to whether such a study would violate state and federal medical privacy laws. Ultimately, those concerns could not be resolved to the satisfaction of the Players Association, and the study was not conducted.

#### Documents Reviewed

This investigation was an independent inquiry on behalf of a private entity. As a result, I had no subpoena power or any other method of compelling cooperation. I made a number of requests for the production of documents from the Commissioner's Office and each of the thirty clubs. I received over 115,000 pages of documents from the Commissioner's Office and the thirty clubs. I also received over 20,000 electronic records retrieved from the computer

systems of the Commissioner's Office and some of the clubs. Each of the thirty clubs certified that it had provided all responsive non-privileged documents that I requested.

I also requested the Players Association to provide documents based on essentially identical requests. It declined to do so.

I also obtained documents from a variety of third parties and from public sources.

### Interviews

We interviewed more than 700 witnesses in the United States, Canada, and the Dominican Republic.

The Commissioner required the clubs to make their non-playing personnel available for interviews, and the clubs complied. In all, we conducted interviews of over 550 individuals who are current or former club officials, managers or coaches, team physicians, athletic trainers, or resident security agents.

We also interviewed 16 persons from the Commissioner's Office, including Commissioner Selig, president and chief operating officer Robert DuPuy, senior vice president for security and facility management Kevin Hallinan and executive vice president for labor relations Robert D. Manfred, Jr., who was interviewed formally on three separate occasions. During the investigation, we also had some meetings and telephone calls with Rob Manfred, Bob DuPuy, and on a few occasions with Commissioner Selig that, while not formal interviews, often included some discussion of the relevant issues.

Under the Basic Agreement, any request for an interview with a current player must be made through his representative, the Players Association.<sup>584</sup> Through the Players

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<sup>584</sup> See 2006 Basic Agreement, Art. XII(E).

Association, I asked to interview more than 50 players who were at the time on the 40-man roster of a major league club. Almost without exception, those players declined to meet with me.

In addition, I prepared a memorandum to all current players that was distributed to them at my request by the Commissioner's Office. In it, I invited any player to speak with me who had relevant information or who otherwise wanted to do so. The Players Association also prepared a memorandum that was distributed to players at the same time. Copies of both memoranda are included at the end of this Appendix. No player responded to my memorandum.

We spoke with a number of former players, some of whom were forthcoming about the prevalence of performance enhancing substances in Major League Baseball, and also about their own use. We attempted to contact almost 500 former players and conducted substantive interviews of over 70 of them.<sup>585</sup>

I asked to interview Donald Fehr, the executive director of the Players Association, and Gene Orza, its chief operating officer. Mr. Fehr agreed to an interview; Mr. Orza did not.

We also received significant cooperation from individuals who are no longer employed in Major League Baseball, including executives, managers, coaches, athletic trainers, doctors, and clubhouse personnel. We interviewed over 100 former club employees and other individuals with relevant knowledge.

We interviewed or consulted with many others whose views and information were very helpful, including: former Commissioners of Baseball Peter V. Ueberroth and Francis T. ("Fay") Vincent; numerous law enforcement and other officials; experts from the United States

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<sup>585</sup> Former players are not members of the bargaining unit, but even though I was not required to do so I nevertheless agreed to provide the Players Association with advance notice of my intent to request an interview with any former player for whom I had received allegations of his illegal use of performance enhancing substances.

Anti-Doping Agency, the World Anti-Doping Agency and the Australian Sports Anti-Doping Authority; John Dowd, who conducted the Pete Rose investigation; Don Hooton, chairman of The Taylor Hooton Foundation; Dr. Gary Green; Dr. Jay Hoffman; Frank Thomas of the Toronto Blue Jays; and many others.

Many persons declined our requests for an interview, including many former players who are alleged to have used banned substances; central figures in the BALCO investigation; and, as noted earlier, over fifty current players from whom we sought interviews. The persons we did interview were not under oath.

Although I was not able to obtain every relevant fact, I did receive enough information to be able to describe the history and current status of the illegal use of performance enhancing substances in Major League Baseball.

**To:** ALL MAJOR LEAGUE BASEBALL PLAYERS  
**From:** Senator George J. Mitchell  
**Date:** September 6, 2007  
**Subject:** Independent Investigation of Performance Enhancing Substance Use

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I have been retained by the Commissioner of Baseball to conduct an independent investigation into the alleged illegal use of performance enhancing substances in Major League Baseball. I have pledged to conduct an investigation and to complete a report that is independent, thorough, and fair. I believe it's in your interest to help me achieve those objectives.

**The illegal use of performance enhancing substances is a serious violation of the rules of Major League Baseball which directly affects the integrity of the game. The principal victims are the majority of players who don't use such substances.**

That reality is too often overlooked in discussions about steroids. Much has been said and written about the adverse effect on the integrity of the game, on the fans, and on the general public. All are important. But those who are most harmed, those whose careers and livelihoods are put at risk, are the players who don't use such substances. They rely on their talent, skill, and hard work, as should all players. And a younger generation of aspiring major league players is affected as well, as young players may be led to believe that, even though Baseball currently has a tough drug policy, they cannot succeed without violating that policy and the law.

No one has a stronger interest in dealing with this issue than major league players. Accordingly, I am inviting all current Major League Baseball players who believe they may have relevant information, or who for any reason wish to speak to me or to a senior member of my team, to contact me.

**If you wish to provide information on a confidential basis, I assure you that I will fully honor your request for confidentiality in my report.**

As has been announced publicly, Kirk Radomski has agreed to cooperate with my investigation at the direction of the United States Attorneys Office for the Northern District of California ("USAO"). Under our agreement with the USAO, neither I nor my staff are required to supply any information to that Office. The USAO has not made any request that we supply them with information nor do we anticipate receiving any such request. I previously served as a United States Attorney and can confirm from direct personal experience that the USAO has at its disposal a vast array of investigative tools – subpoena power, search warrants, the use of agents from several federal agencies, to name just a few – which eliminate any need on their part for my assistance.



**So any allegation that the USAO is using me or my investigation to do their work for them, or to obtain information from me, is simply untrue.**

The Players Association understandably has expressed concern about possible criminal prosecutions of players for the illegal use of steroids. As you evaluate that concern please keep in mind that through the 2006 season 221 professional baseball players (14 major leaguers and 207 minor leaguers) have been suspended after testing positive for steroids or other performance enhancing substances, including stimulants, but not one of them was ever convicted in a criminal prosecution. I asked the Players Association and the Commissioner's office to provide me with the name of any player who has been prosecuted and convicted for the illegal use or possession of steroids. Both said that they are not aware of that ever happening. This is because prosecuting authorities generally follow practices like those of the U.S. Department of Justice which pursues prosecution of the manufacturers and distributors of such substances, not the athletes who use them.

You or your representative may reach me at 212-XXX-XXXX or Charlie Scheeler of my staff (XXX-XXX-XXXX or [email address]) and we will arrange a meeting at a time and place convenient for you. Of course, if you choose to so volunteer, you will have the right to bring representatives to the meeting, including your personal counsel and/or a representative of the Major League Baseball Players Association. Under the Basic Agreement, the Players Association also has the right to receive prior notice of any interview that we conduct with a major league player.

MAJOR LEAGUE BASEBALL  
PLAYERS ASSOCIATION



## MEMORANDUM

To: All Players  
From: Donald Fehr & Michael Weiner  
Date: 6 September 2007  
Re: *Mitchell Investigation*

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As you know, in early 2006, shortly after the players had agreed to the new Joint Drug Agreement, Commissioner Selig hired former Senator George Mitchell and his law firm (DLA Piper) to conduct an investigation into the use of steroids and other illegal performance-enhancing drugs in baseball. We write today regarding a memo Senator Mitchell is sending to all players, in which he encourages players to meet with his investigative team.

Any player who wishes to speak to Senator Mitchell in response to this request has the right to do so. Any such player has the right to be represented by the MLBPA and his own lawyer in arranging any such meeting and during the meeting itself. Given the serious legal issues which may be involved here, both inside and outside of baseball, *we strongly encourage you to seek the advice of MLBPA counsel and a qualified private attorney before proceeding.*

Commissioner Selig has not ruled out disciplining (suspending and/or fining) players as a result of information gathered by the Mitchell investigation. Therefore, you should be aware that any information provided could lead to discipline of you and/or others. (Any discipline imposed could be challenged by grievance.) Remember also that there are a number of ongoing federal and state criminal investigations in this area, and any information gathered by Senator Mitchell in player interviews is not legally privileged. What this means is that while Senator Mitchell pledges in his memo that he will honor any player request for confidentiality *in his report*, he does not pledge, because he cannot pledge, that any information you provide will actually remain confidential and not be disclosed without your consent. For example, Senator Mitchell cannot

promise that information you disclose will not be given to a federal or state prosecutor, a Congressional committee, or even turned over in a private lawsuit in response to a request or a subpoena (a legally enforceable order).

Senator Mitchell points out that no player has yet been prosecuted for illegal use of steroids and that prosecutors "generally follow practices" of pursuing manufacturers and distributors, not users. Be aware, though, that a federal prosecutor recently stated in court that the nationwide federal criminal investigation of steroids in sports is ongoing and clearly indicated that the investigation could lead to prosecution of individual athletes for use.

Senator Mitchell mentions his agreement with the United States Attorney's office in California (USAO), and states that his agreement with the USAO does not require him to provide information to the prosecutor. (Senator Mitchell has refused to provide us with a copy of this agreement, which we asked for so that we can understand the relationship of his investigation to the US Attorney's Office.) But Senator Mitchell does not promise, because, again, he cannot promise, that he will not disclose the information to the USAO (or another prosecutor, Congressional committee, or other governmental entity) in response to a request or subpoena.

Finally, as you know, the owners and the players have bargained long and hard over the subject of performance-enhancing drugs several times over the past five years. The positions adopted by the union in those talks reflect a consensus among all players after numerous meetings, discussions and conference calls. Any comments made to Senator Mitchell -- Commissioner Selig's lawyer -- by an individual player regarding the operation of the Program might well be used by the owners in future bargaining with the union.

It is in light of these considerations that we recommend that you first consult with MLBPA counsel and your own private counsel before responding to Senator Mitchell.

If you have any questions, please call Michael or another MLBPA lawyer at XXX-XXX-XXXX.

*End Memorandum*

## Appendix C

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Rick Hummel, *Cox Hopes to Be Back in Month...Says 25 Starts Are Possible This Season*,  
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Pittsburgh Post-Gazette, Feb. 23, 1992, at C6.

Gene Collier, *Baseball's Field May Not Be Level*,  
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Todd Jones, *Using Drugs Same as Deal with Devil*, Birmingham News, May 31, 1998, at Sports 11.



Mike Lefkow, *Whether McGwire Likes It or Not, the Baseball World Can't Take Its Eyes Off His Mammoth Blasts as He Pursues a Hallowed Record*, Contra Costa Times, June 28, 1998, at B1.

Patrick Reusse, *Juan Gonzalez's 101 RBI Have Put Him on Pace to Break Hack Wilson's 68-Year-Old Record and Have Made Him the Talk of the All-Star Game*, Minneapolis St. Paul Star Tribune, July 7, 1998, at C1.

Joel Stein, *The Fun Is Back*, Time, July 27, 1998, at 40.

Alan Truex, *The Creatine Craze / Steroids Mortgage Future for Muscles, Glory*, Hous. Chron., Aug. 11, 1998, at A1.

Steve Wilstein, *Sports Spotlight: Home-Run Derby / ROGER THAT / Legendary Season Grows with Every Prodigious Clout*, Hous. Chron., Aug. 16, 1998, at Sports 1.

Appendix D

Documents Relating to Transactions Described in Chapter VIII

The documents set forth in this Appendix relate to the transactions described in Chapter VIII of this report, "Information Obtained Regarding Other Players' Possession or Use of Steroids and Human Growth Hormone." We have redacted the copies of checks and money orders that are reproduced here to remove spouses' names, account numbers, addresses, and other non-relevant information.

JOHN C. ALLEN 1612  
DATE 2/1/04  
PAY TO THE ORDER OF Kirk Radinski \$ 140.00  
one hundred forty and 00/100 DOLLARS  
MEMO \_\_\_\_\_ [Signature] \_\_\_\_\_

GARY D. BENNETT, JR. 1740  
DATE 7/13/03  
PAY TO THE ORDER OF Kirk Radinski \$ 3200.00/100  
three thousand Two Hundred and 00/100 DOLLARS  
MEMO \_\_\_\_\_ [Signature] \_\_\_\_\_

LARRY R. BIGBIE 1028  
DATE 6/4/04  
PAY TO THE ORDER OF Kirk Radinski \$ 200.00  
Two hundred dollars and 00/100 DOLLARS  
MEMO DUES \_\_\_\_\_ [Signature] \_\_\_\_\_

LARRY R BIGBIE

433

DATE 3/5/05

PAY TO THE ORDER OF Kirk Radomski \$ 1,200.<sup>00</sup>  
One thousand two hundred dollars and  $\frac{00}{100}$  DOLLARS

MEMO

*L.R.B.*

LARRY R. BIGBIE

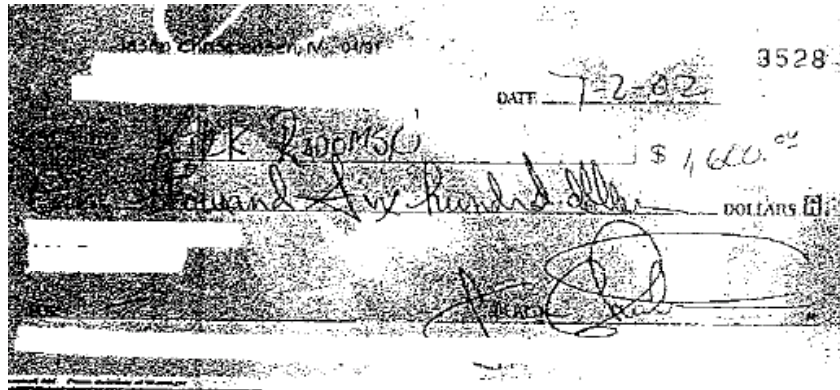
105

DATE 5/6/05

PAY TO THE ORDER OF Kirk Radomski \$ 1,300.<sup>00</sup>  
One thousand three hundred dollars and  $\frac{00}{100}$  DOLLARS

MEMO Supplements

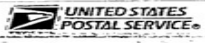
*L.R.B.*



UNITED STATES POSTAL SERVICE<sup>®</sup> POSTAL MONEY ORDER 15-000/000

92618029776 050404 342420 \*500\*00

SERIAL NUMBER	YEAR, MONTH, DAY	POST OFFICE	U.S. DOLLARS AND CENTS
PAY TO Kirk Radomski	CHECWRITER IMPRINT AREA		\$500.00
ADDRESS	FROM H. Clark		
	ADDRESS		
C.O.D. NO. OR USED FOR			

 <b>UNITED STATES POSTAL SERVICE</b>		<b>POSTAL MONEY ORDER</b>		<small>15-800 000</small>	
<b>92618030575 050516 342420 *700*00</b>					
<small>SERIAL NUMBER</small>	<small>YEAR</small>	<small>MONTH</small>	<small>DAY</small>	<small>POST OFFICE</small>	<small>U.S. DOLLARS AND CENTS</small>
<small>PAY TO</small> <b>Kirk Radanski</b>			<small>CHECKWRITER IMPRINT AREA</small> <b>\$\$\$700.00</b>		
<small>ADDRESS</small>			<small>FROM</small> <b>HARVE CLARK</b>		
<small>C.D.D. NO. OR USED FOR</small>			<small>ADDRESS</small>		
<small>SEE REVERSE WARNING</small>			<small>NEGOTIABLE ONLY IN THE U.S. AND POSSESSIONS</small>		

<b>CHRIS B DONNELLS</b>	<b>1</b>	<small>2248</small> DATE <b>Nov 27 2001</b>
<small>PAY TO THE ORDER OF</small> <b>Kirk Radanski</b>		<b>\$ 2,050.00</b>
<b>Two thousand fifty and 00/100</b>		<small>MINIMUM OF \$100.00</small> <b>C.B.D.</b>

<b>CHRIS B DONNELLS</b>	<b>1</b>	<small>2364</small> DATE <b>Nov 5 2002</b>
<small>PAY TO THE ORDER OF</small> <b>Kirk Radanski</b>		<b>\$ 1,200.00</b>
<b>One thousand two hundred and 00/100</b>		<small>MINIMUM OF \$100.00</small> <b>C.B.D.</b>
<small>MEMO</small>		

<b>CHRIS B DONNELLS</b>	<b>1</b>	<small>2466</small> DATE <b>Nov 27 2001</b>
<small>PAY TO THE ORDER OF</small> <b>Kirk Radanski</b>		<b>\$ 2,000.00</b>
<b>Two thousand and 00/100</b>		<small>MINIMUM OF \$100.00</small> <b>C.B.D.</b>

CHRIS B. DONNELLS

2424

DATE Aug 8, 2003

PAY TO THE ORDER OF Kirk Radomski \$ 1,600.00  
Six Thousand Six Hundred and 00/100 DOLLARS

MINIMUM OF \$100.00

CBDS

MEMO Supplements

Chris B Donnels

2310

Date Aug 8, 2003

PAY to the order of Kirk Radomski \$ 1,600.00  
One Thousand Six Hundred and 00/100 Dollars

For Supplements

CBDS

Chris B Donnels


2333

Date June 23, 2004

PAY to the order of Kirk Radomski \$ 1,600.00  
One Thousand Six Hundred and 00/100 Dollars

For \_\_\_\_\_

CBDS

		<b>POSTAL MONEY ORDER</b>	
SERIAL NUMBER <b>04896292048</b>	YEAR, MONTH, DAY <b>2003-05-14</b>	POST OFFICE	U.S. DOLLARS AND CENTS <b>1600.00</b>
AMOUNT <b>SIX HUNDRED DOLLARS &amp; 00/100</b>			
PAY TO <u>Kirk Radomski</u>		NEGOTIABLE ONLY IN THE U.S. AND POSSESSIONS SEE REVERSE WARNING	
ADDRESS	FROM <u>CB</u>	CLERK <b>0008</b>	
POST OFFICE OR USED FOR	ADDRESS		

UNITED STATES POSTAL SERVICE		POSTAL MONEY ORDER	
SERIAL NUMBER 04896292037	YEAR, MONTH, DAY 2003-05-14	POST OFFICE	U.S. DOLLARS AND CENTS \$1000.00
AMOUNT ONE THOUSAND DOLLARS & 00¢ *****			
PAY TO Kirk Radomski		NEGOTIABLE ONLY IN THE U.S. AND POSSESSIONS (SEE REVERSE WARNING)	
ADDRESS	FROM	CLEAR 0008	
ADD NO OR USED FOR	ADDRESS		

JASON GRIMSLEY 5444

8-7-01 DATE

PAY TO THE ORDER OF Kurt Radomski \$ 2500.00

Two Thousand Five Hundred No/100 DOLLARS

FOR

JASON GRIMSLEY 5463

8-11-01 DATE

PAY TO THE ORDER OF Kurt Radomski \$ 2500.00

Two Thousand Five Hundred No/100 DOLLARS

FOR

CASHIER'S CHECK 507900

NOTICE TO CUSTOMERS: THE PURCHASE OF AN INSTRUMENT BEHINDS BE REQUIRED BEFORE ANY OTHER CHECK OF THIS NAME WILL BE REPLACED OR REFUNDED IN THE EVENT IT IS LOST, DESTROYED OR STOLEN

Date: January 25, 2002

Void After 60 Days

REMITTER: JASON GRIMSLEY

PAY TO THE ORDER OF KURT RADOMSKI

\$ 2,500.00 \$ \$2,500.00

Arline Belin

**CASHIER'S CHECK** 507301

Date January 25, 2002

NOTICE TO CUSTOMERS  
THE PURCHASE OF AN INSURANCE POLICY WILL BE REQUIRED BEFORE ANY  
OFFICIAL CHECK OF THIS BANK WILL BE REPLACED OR REFUNDED IN THE  
EVENT IT IS LOST, DESTROYED OR STOLEN

ISSUER: **JASON GRIMSLEY**

PAY TO THE ORDER OF: **KURT RADOMSKI**

AMOUNT: **\$ 2,500.00**

*Arlene Gilman*  
AUTHORIZED SIGNATURE

**JASON GRIMSLEY** ANNE GEDDES 5968

Date: 1-27

Pay to the Order of: Kurt Radomski

Amount: **\$ 5000.00**

*[Handwritten Signature]*



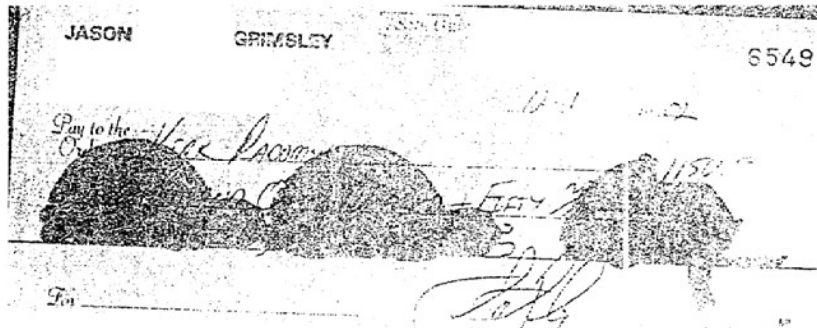
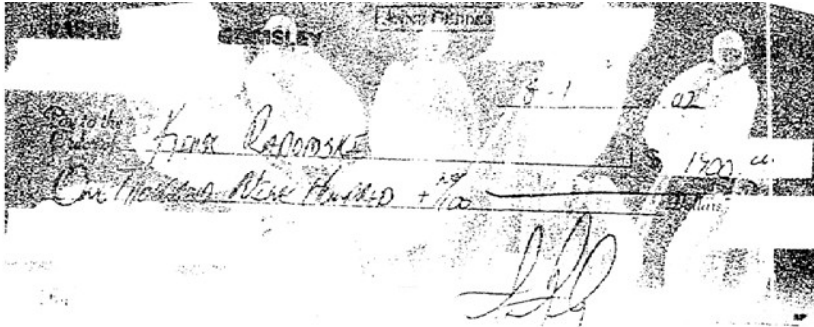
**JASON GRIMSLEY** ANNE GEDDES 5982

Date: 3-22

Pay to the Order of: Kurt Radomski

Amount: **\$ 1250.00**

*[Handwritten Signature]*



JASON GRIMSLEY 2439  
DATE 9/25/04  
PAY TO THE ORDER OF Kirk Radomski \$ 3200.00  
THREE THOUSAND TWO HUNDRED DOLLARS  
MEMO \_\_\_\_\_  
AP \_\_\_\_\_

JASON GRIMSLEY 2551  
DATE 7-21-04  
PAY TO THE ORDER OF Kirk Radomski \$ 3200.00  
THREE THOUSAND TWO HUNDRED DOLLARS  
MEMO \_\_\_\_\_  
AP \_\_\_\_\_



JASON GRIMSLEY

3106

DATE 7-29-05

PAY TO THE ORDER OF Kirk Radomski \$ 3200.00  
THIRTY-TWO HUNDRED & NO/100 DOLLARS

MEMO

JASON GRIMSLEY 5983  
PAY TO THE ORDER OF Kirk Radomski \$ 3200.00  
THIRTY-TWO HUNDRED & NO/100 DOLLARS

JASON GRIMSLEY 6443  
PAY TO THE ORDER OF Kirk Radomski \$ 3200.00  
THIRTY-TWO HUNDRED & NO/100 DOLLARS

JERRY W. HAIRSTON

276

DATE 6/16/03

PAY TO THE ORDER OF Kirk Radomski \$ 600.00  
Six Hundred Dollars 00/100 DOLLARS

MATTHEW HERGES

373

DATE 11/1/05

PAY TO THE ORDER OF KIRK RADOMSKI \$3,240.00

THREE THOUSAND TWO HUNDRED FORTY DOLLARS AND 00/100 DOLLARS

ABCDEFGHIJKL MNOPQRST UVWXYZ

MEMO THANKS!

*[Handwritten signature]*

*[Handwritten initials]* GLENALLEN HILL

2135

DATE 9/14/01

PAY TO THE ORDER OF KIRK RADOMSKI \$ 3,200 00/100

THREE THOUSAND TWO HUNDRED AND 00/100 DOLLARS

MEMO THANKS!

*[Handwritten signature]*

PERSONAL MONEY ORDER

0479005727

February 05, 2002

PAY TO THE ORDER OF KIRK RADOMSKI  
\*\*\* FRM MICHAEL LANSING\*\*\*

\*\*\*One thousand dollars and no cents\*\*\*

\*\*\$1,000.00\*\*

*[Handwritten signature: Michael Lansing]*

PERSONAL MONEY ORDER

0479005728

February 05, 2002

PAY TO THE ORDER OF KIRK RADOMSKI  
\*\*\* FRM MICHAEL LANSING\*\*\*

\*\*\*One thousand dollars and no cents\*\*\*

\*\*\$1,000.00\*\*

*[Handwritten signature: Michael Lansing]*

PAUL LODUCA

200

DATE 6/26/04

PAY TO THE ORDER OF KIRK RADONSKI \$ 3,200<sup>00</sup>  
thirty two hundred & 00/100 DOLLARS

MEMO \_\_\_\_\_ Paul Loduca

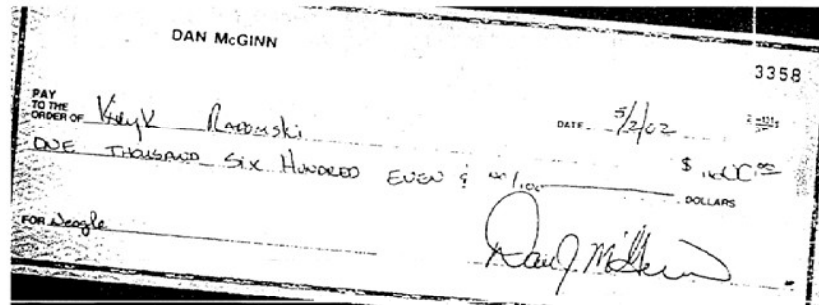
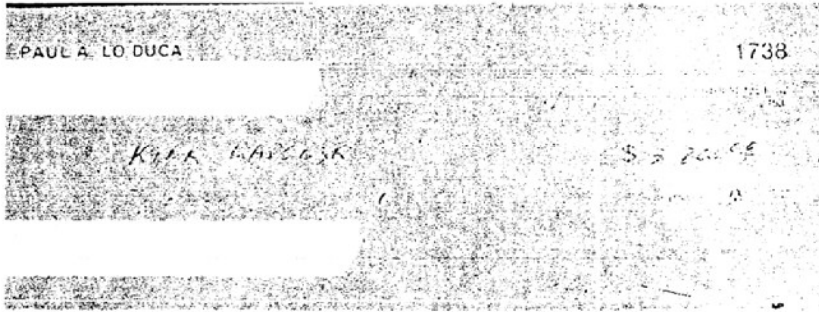
PAUL LODUCA

202

DATE 8/7/04

PAY TO THE ORDER OF KIRK RADONSKI \$ 3,200<sup>00</sup>  
thirty two hundred & 00/100 DOLLARS

MEMO \_\_\_\_\_ Paul Loduca



BRIAN G. McNAMEE

198

Date 8-19-03

Pay to the Order of Kirk Hadamski \$ 825<sup>00</sup>  
Eight hundred + Twenty five Dollars

For \_\_\_\_\_ Brian G. McNamee

BRIAN G. McNAMEE

204

Date 11/22/03

Pay to the Order of MR. Kirk Hadamski \$ 1,000<sup>00</sup>  
One Thousand Dollars

For FOR TRAINING SUM Brian G. McNamee

BRIAN McNAMEE INC.

1118

DATE 7-15-04

PAY TO THE ORDER OF Mr. Kirk Hadamski \$ 3,275<sup>00</sup>  
Three Thousand Two hundred + Seventy five DOLLARS

FOR \_\_\_\_\_ Brian G. McNamee

DR BRIAN McNAMEE

9033

DATE 11/11/04

PAY TO THE ORDER OF Mr. Kirk Hadamski \$ 2,400<sup>00</sup>  
Two Thousand + four hundred DOLLARS

FOR Low Repair Sub Brian G. McNamee

WELLS FARGO BANK  
KURK RADOMSKI \$ 1600.<sup>00</sup>  
SIXTEEN HUNDRED Dollars  
*Kurk Radomski*

OFFICIAL CHECK 727155314  
Remitter: Denny Neagle Date: 9/28/2001  
Pay To The Order Of: \*\*\*Kurk Radomski\*\*\* S \*\*670.00\*\*  
*Kurk Radomski*

OFFICIAL CHECK 727155317  
Remitter: Denny Neagle Date: 9/28/2001  
Pay To The Order Of: \*\*\*Kurk Radomski\*\*\* S \*\*510.00\*\*  
*Kurk Radomski*

OFFICIAL CHECK 727155316  
Remitter: Denny Neagle Date: 9/28/2001  
Pay To The Order Of: \*\*\*Kurk Radomski\*\*\* S \*\*600.00\*\*  
*Kurk Radomski*

OFFICIAL CHECK 727155315  
 Remitter: Denny Neagle Date: 9/28/2001  
 Pay To The Order Of: \*\*\*Kirk Radomski\*\*\* \$\*\*600.00\*\*  
*Kam White*

OFFICIAL CHECK 727155313  
 Remitter: Denny Neagle Date: 9/28/2001  
 Pay To The Order Of: \*\*\*Kirk Radomski\*\*\* \$\*\*1.00.00\*\*  
*Kam White*

Dennis E. Neagle, Jr. 3684  
 DATE: April 25<sup>th</sup> 2002  
 PAY TO THE ORDER OF: KIRK RADOMSKI \$ 1,500.00  
 One Thousand Five Hundred Dollars DOLLARS  
 MEMO: *5/1/02*

Dennis E. Neagle, Jr. 3620  
 DATE: May 12<sup>th</sup> 2002  
 PAY TO THE ORDER OF: KIRK RADOMSKI \$ 1,450.00  
 One Thousand Four Hundred Fifty Dollars DOLLARS  
 MEMO: *5/1/02*

**OFFICIAL CHECK**

738780922

Remitter **Danny Neagle** Date **May 19, 2004**

Pay To The Order Of **Kirk Radomski \*\* \*\* \*** \$ **700.00**

*[Signature]*

**JIM PARQUE** **7763**

DATE 12/6/03

PAY TO THE ORDER OF Kirk Radomski \$ 1600.<sup>00</sup>

Sixteen Hundred Dollars Even DOLLARS

MEMO *[Signature]*

**JIM PARQUE** **7692**

DATE Oct 18, 2005

PAY TO THE ORDER OF Kirk Radomski \$ 3200.<sup>00</sup>

Thirty Two Hundred Dollars DOLLARS

MEMO *[Signature]*

**ADAM DAVID PIATT** **168**

DATE 5-24-02

PAY TO THE ORDER OF Kirk Radomski \$ 220.00

Two Hundred Eighty Dollars DOLLARS

FOR *[Signature]*

ADAM DAVID PIATT

319

DATE 7/1/03

PAY TO THE ORDER OF Kirk Radonski \$ 575.00  
Five Hundred Seventy Five Dollars & 00/100 DOLLARS

FOR




ADAM DAVID PIATT

182

DATE 5-5-03

PAY TO THE ORDER OF Kirk Radonski \$ 200.00  
Two Hundred Dollars & 00/100 DOLLARS

FOR



Adam David Piatt

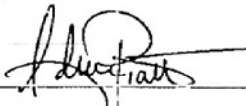
2090

DATE 7-8-03 3-5/310

PAY TO THE ORDER OF Kirk Radonski \$ 2,500.00  
Two Thousand Five Hundred Dollars & 00/100 DOLLARS

SCHWAB ONE

FOR



Adam David Piatt

2091

DATE 7-8-03

PAY TO THE ORDER OF Kirk Radonski \$ 2,500.00  
Two Thousand Five Hundred Dollars & 00/100 DOLLARS

FOR





Adam David Piatt

2128

8/19/03 DATE

PAY TO THE ORDER OF Kirk Radomski \$ 2000.00  
Two thousand 00/100 DOLLARS

FOR

*Adam David Piatt*

ADAM DAVID PIATT

5034

DATE 9-12-04

PAY TO THE ORDER OF Kirk Radomski \$ 2,000.00  
Two Thousand Dollars and 00/100 DOLLARS

MEMO

*AD*

ADAM DAVID PIATT

5036

DATE 9-12-04

PAY TO THE ORDER OF Kirk Radomski \$ 1,500.00  
One Thousand Five Hundred Dollars ; 00/100 DOLLARS

MEMO

*AD*

**MONEY ORDER**

06-059873344

82-401021

PAY EXACTLY

PAY TO THE ORDER OF Kirk Radomski

*AD*

PURCHASER BY SIGNING YOU AGREE TO THE TERMS ON THE REVERSE SIDE  
*V. Pittmore*

FRONT OF THE DOCUMENT HAS A MICRO-PRINT AMOUNT BOX AND THERMOCHROMIC. ABSENCE OF THESE FEATURES WILL INDICATE A COPY

**INTERNATIONAL MONEY ORDER** 08/02/03

**TravelersExpressMoneyGram**

**MONEY ORDER**

**IMPORTANT - SEE BACK BEFORE CASHING**

PAY TO THE ORDER OF: Kirk Radanski

PURCHASER, SIGNER FOR DRAWER: Adam Riggs

PURCHASER, BY SIGNING YOU AGREE TO THE SERVICE CHARGE AND OTHER TERMS ON THE REVERSE SIDE

ADDRESS: \_\_\_\_\_

ISSUER/DRAWER: TRAVELERS EXPRESS COMPANY, INC.

937492342310001  
0427906214149646

200 00 00  
TWO HUNDRED \*\*\*  
DOLLARS 00 CENTS

FRONT OF THE DOCUMENT HAS A MICRO-PRINT AMOUNT BOX AND THERMOCHROMIC. ABSENCE OF THESE FEATURES WILL INDICATE A COPY

**INTERNATIONAL MONEY ORDER** 08/03/03

**TravelersExpressMoneyGram**

**MONEY ORDER**

**IMPORTANT - SEE BACK BEFORE CASHING**

PAY TO THE ORDER OF: Kirk Radanski

PURCHASER, SIGNER FOR DRAWER: Adam Riggs

PURCHASER, BY SIGNING YOU AGREE TO THE SERVICE CHARGE AND OTHER TERMS ON THE REVERSE SIDE

ADDRESS: \_\_\_\_\_

ISSUER/DRAWER: TRAVELERS EXPRESS COMPANY, INC.

9963554653

937492342310001  
0427906218191853

100 00 00  
ONE HUNDRED \*\*\*  
FIFTY DOLLARS \*\*  
00 CENTS \*\*\*\*\*

FRONT OF THE DOCUMENT HAS A MICRO-PRINT AMOUNT BOX AND THERMOCHROMIC. ABSENCE OF THESE FEATURES WILL INDICATE A COPY

**TravelersExpressMoneyGram**

**INTERNATIONAL MONEY ORDER** 11/30/2003

**MONEY ORDER**

**IMPORTANT - SEE BACK BEFORE CASHING**

PAY TO THE ORDER OF: Kirk Radanski

PURCHASER, SIGNER FOR DRAWER: Ad Riggs

PURCHASER, BY SIGNING YOU AGREE TO THE SERVICE CHARGE AND OTHER TERMS ON THE REVERSE SIDE

ADDRESS: \_\_\_\_\_

ISSUER/DRAWER: TRAVELERS EXPRESS COMPANY, INC.

937492342310001  
0427906218191853

300 00 00  
THREE HUNDRED \*\*  
DOLLARS 00 CENTS

FRONT OF THE DOCUMENT HAS A MICRO-PRINT AMOUNT BOX AND THERMOCHROMIC. ABSENCE OF THESE FEATURES WILL INDICATE A COPY

**TravelersExpressMoneyGram**

**INTERNATIONAL MONEY ORDER** 11/30/2003

**MONEY ORDER**

**IMPORTANT - SEE BACK BEFORE CASHING**

PAY TO THE ORDER OF: Kirk Radanski

PURCHASER, SIGNER FOR DRAWER: Ad Riggs

PURCHASER, BY SIGNING YOU AGREE TO THE SERVICE CHARGE AND OTHER TERMS ON THE REVERSE SIDE

ADDRESS: \_\_\_\_\_

ISSUER/DRAWER: TRAVELERS EXPRESS COMPANY, INC.

937492342310001  
0427906218191853

500 00 00  
FIVE HUNDRED \*\*  
DOLLARS 00 CENTS

DAVID SEGUI 16  
Date 10-23-00  
Pay to the Order of KIRK RADOMSKI \$ 1400.00  
ONE THOUSAND FOUR HUNDRED DOLLARS <sup>00</sup>/<sub>100</sub> Dollars  
For F.T. Sestak

DAVID SEGUI 213  
DATE Dec 5, 2002  
PAY TO THE ORDER OF Kirk Radomski \$ 1900.00  
One Thousand Nine Hundred <sup>00</sup>/<sub>100</sub> DOLLARS  
Personal Trainer (Signature)

DAVID SEGUI 214  
DATE Dec 5, 2002  
PAY TO THE ORDER OF Kirk Radomski \$ 1900.00  
One Thousand Nine Hundred <sup>00</sup>/<sub>100</sub> DOLLARS  
Personal Trainer (Signature)

DAVID SEGUI 287  
DATE Aug 27, 2003  
PAY TO THE ORDER OF Kirk Radomski \$ 900.00  
Nine Hundred <sup>00</sup>/<sub>100</sub> DOLLARS  
Personal Training & Nutrition (Signature)

DAVID SEGUI

382

DATE July 27, 2001

PAY TO THE ORDER OF Kirk Radomski \$ 1800.00  
One Thousand Eight hundred 00/100 DOLLARS

*[Signature]*

DAVID SEGUI

104

PAY TO THE ORDER OF [Faint] \$ 2100.00  
[Faint] DOLLARS

*[Signature]*

DAVID SEGUI

169

PAY TO THE ORDER OF [Faint] \$ 3200.00  
[Faint] DOLLARS

*[Signature]*

MIGUEL TEJADA

1104

DATE 3-21-03 *[Faint]*

PAY TO THE ORDER OF Adam Piatt \$ 3100.00  
Three Thousand One hundred and 00/100 DOLLARS

*[Signature]*

MIGUEL TEJADA

1105

3-21-03 *date*

Pay to the Order of Adon Piatt \$ 3200.00  
Three thousand two hundred and 00/100 *cents*

To \_\_\_\_\_ *[Signature]*

MAURICE MO VAUGHN 2001  
GILAM ENTERPRISES

6-1-04

PAY TO THE ORDER OF Kirk Radomski \$ 3,200  
Three thousand & two hundred 00/100 *cents*

MEMO \_\_\_\_\_ *[Signature]*

MAURICE MO VAUGHN 2132

2-20-04

PAY TO THE ORDER OF Kirk Radomski \$ 5,200  
Five thousand & 200/100 *cents*

MEMO \_\_\_\_\_ *[Signature]*

MAURICE MO VAUGHN 2008

6-19-01

PAY TO THE ORDER OF Kirk Radomski \$ 2,200  
Two thousand & 200/100 *cents*

MEMO \_\_\_\_\_ *[Signature]*

Cashier's Check No. 2798643

VOID AFTER 90 DAYS JULY 05 2005

FERNANDO VINA Remitter (Purchased By)

Pay to the Order of FIVE HUNDRED DOLLARS AND 00 CENTS \$ 500.00

Authorized Signature: *[Signature]*

FERNANDO VINA 1416

Date 4/21/03

Pay to the order of Kirk Ranski \$ 240.00

Two Hundred Forty Dollars Dollars

Authorized Signature: *[Signature]*

Cashier's Check No. 41152049

VOID AFTER 90 DAYS JULY 05 2005

FERNANDO VINA Remitter (Purchased By)

Banking Center

Pay \*\*ONE HUNDRED FIFTY DOLLARS AND 00 CENTS\*\* \$ \*\*150.00\*\*

To The Order Of \*\*KIRK RADOSKI\*\*

Authorized Signature: *[Signature]*

RONDELL WHITE 1349

Date March 12, 03

Pay to the Order of Kirk Ranski \$ 350.00

Three Hundred Five Dollars Dollars

Authorized Signature: *[Signature]*

RONDELL WHITE 1800  
Date Dec 26, 01  
Pay to the order of Kirk Rudomski \$ 2400.00  
Two Thousand Four Hundred  
Dollars  
For bought something  
R. D. White

RONDELL WHITE 1408  
Date Dec 22, 02  
Pay to the order of Kirk Rudomski \$ 1500.00  
One Thousand Five Hundred  
Dollars  
R. D. White

RONDELL WHITE 1473  
Date June 14, 02  
Pay to the order of Kirk Rudomski \$ 600.00  
Six Hundred  
Dollars  
R. D. White

RONDELL WHITE 1483  
Date Aug 22, 02  
Pay to the order of Kirk Rudomski \$ 500.00  
Five Hundred  
Dollars  
R. D. White

RONDELL WHITE

412

DATE Oct 5, 04

PAY TO THE ORDER OF Kurt Radomski \$ 300.00  
Three Hundred Two Dollars DOLLARS

MEMO Bill R White AP

RONDELL WHITE

818

Date Sept 29, 05

Pay to the Order of Kurt Radomski \$ 350.00  
Three Hundred Five Dollars Dollars

Memo bill R White AP



Remitter Jeff Williams

Date 2/10/2004

Pay: ONE THOUSAND EIGHT HUNDRED TWENTY DOLLARS AND 00 CENTS

Pay To The Order Of Kirk Radomski \$ \*\*\*\*\*1,820.00 \*\*\*

Stephen P. Hughes

GREGORY O. ZAUN

3395

Kirk Radomski  
Three Hundred

8-6-01  
\$ 500.00

[Signature]



PHONE ]

NAME PRINT

*MIKE KAUSID*

--	--	--	--	--

+



usps.com

Dodger Stadium



THANKS,  
CALL me if  
you need ANYTHING!  
Paul

KIRK,

SORRY! BUT FOR SOME  
REASON they sent the check BACK  
TO me. I haven't been able to  
CALL you back because my phone  
IS TOAST. I have a new #  
it is please  
leave your # again because I  
LOST ALL OF my phonebook with  
the other phone.

Thanks

Paul

Customer Copy  
Label 11-B September 200



ER 921000544 US



UNITED STATES POSTAL SERVICE®

Post Office To Addressee

**ORIGIN (POSTAL USE ONLY)**

NO ZIP Code *14417* Day of Delivery  Next  Second  Flat Rate Envelope  *FF*

Date In *10-2-04* Year  72 Noon  3 PM  Postage \$ *1.75*

Time In *12:20* PM  AM  Military  2nd Day  3rd Day  Return Receipt Fee \$

Weight *5.1* lbs.  ozs. Int'l Alpha Country Code  COD Fee \$

No Delivery  Weekend  Holiday  Acceptance Clerk Initials *K.R.* Total Postage & Fees \$ *1.75*

FROM: (PLEASE PRINT) *K. RADANSKI* PHONE ( )

**DELIVERY (POSTAL USE ONLY)**

Delivery Attempt Time  AM  PM Employee Signature

Mo. Day Delivery Attempt Time  AM  PM Employee Signature

Mo. Day Delivery Date Time  AM  PM Employee Signature

Mo. Day  AM  PM Employee Signature

**CUSTOMER USE ONLY**

PAYMENT BY ACCOUNT Express Mail Corporate Acct. No.  **WAVES OF SIGNATURE (Domestic Only)** Addressee's signature is required. I wish delivery to be made without obtaining signature by addressee or addressee's agent. If delivery employee judges that article can be left in secure location and authorize that delivery employee's signature constitutes valid proof of delivery.

Federal Agency Acct. No. or Postal Service Acct. No.  NO DELIVERY  Holiday  Weekend Customer Signature

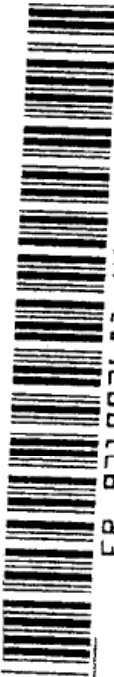
TO: (PLEASE PRINT) *KEVIN BROWN* PHONE ( )

FOR PICKUP CALL 1-800-222-1811

[www.usps.com](http://www.usps.com)

PRESS HARD. You are making 3 copies.

ZIP + 4 *07417+*



ER 921002681 US

Customer Copy  
Label 11-B September 2002



UNITED STATES POSTAL SERVICE® Post Office To Address

**ORIGIN (POSTAL USE ONLY)**

11949

Date In: Mo. 8 Day 9 Year 09

Time In:  AM  PM

Weight: lbs. ozs.

Unit of Delivery:  Next  Second

Flat Rate Envelope:

Postage: \$

Return Receipt Fee: \$

Insurance Fee: \$

ODD Fee: \$

Total Postage & Fees: \$ 1.85

Acceptance Clerk Initials: KR

**FROM: (PLEASE PRINT)**

K RADONSKI

PHONE:

**DELIVERY (POSTAL USE ONLY)**

Delivery Attempt	Time	Employee Signature
Mo. Day	<input type="checkbox"/> AM <input type="checkbox"/> PM	
Delivery Attempt	Time	Employee Signature
Mo. Day	<input type="checkbox"/> AM <input type="checkbox"/> PM	
Delivery Date	Time	Employee Signature
Mo. Day	<input type="checkbox"/> AM <input type="checkbox"/> PM	

**CUSTOMER USE ONLY**

**PAYMENT BY ACCOUNT**  
Express Mail Corporate Acct. No.

Federal Agency Acct. No. or  
Postal Service Acct. No.

NO DELIVERY  
 Weekend  Holiday

Customer Signature

**TO: (PLEASE PRINT)**

PHONE:

DODGER STADIUM  
90 ERIC GAGNE - L. A. DODGERS-HOME CLUB  
1000 ELYSIAN PARK AVE.  
LOS ANGELES, CA. 90012

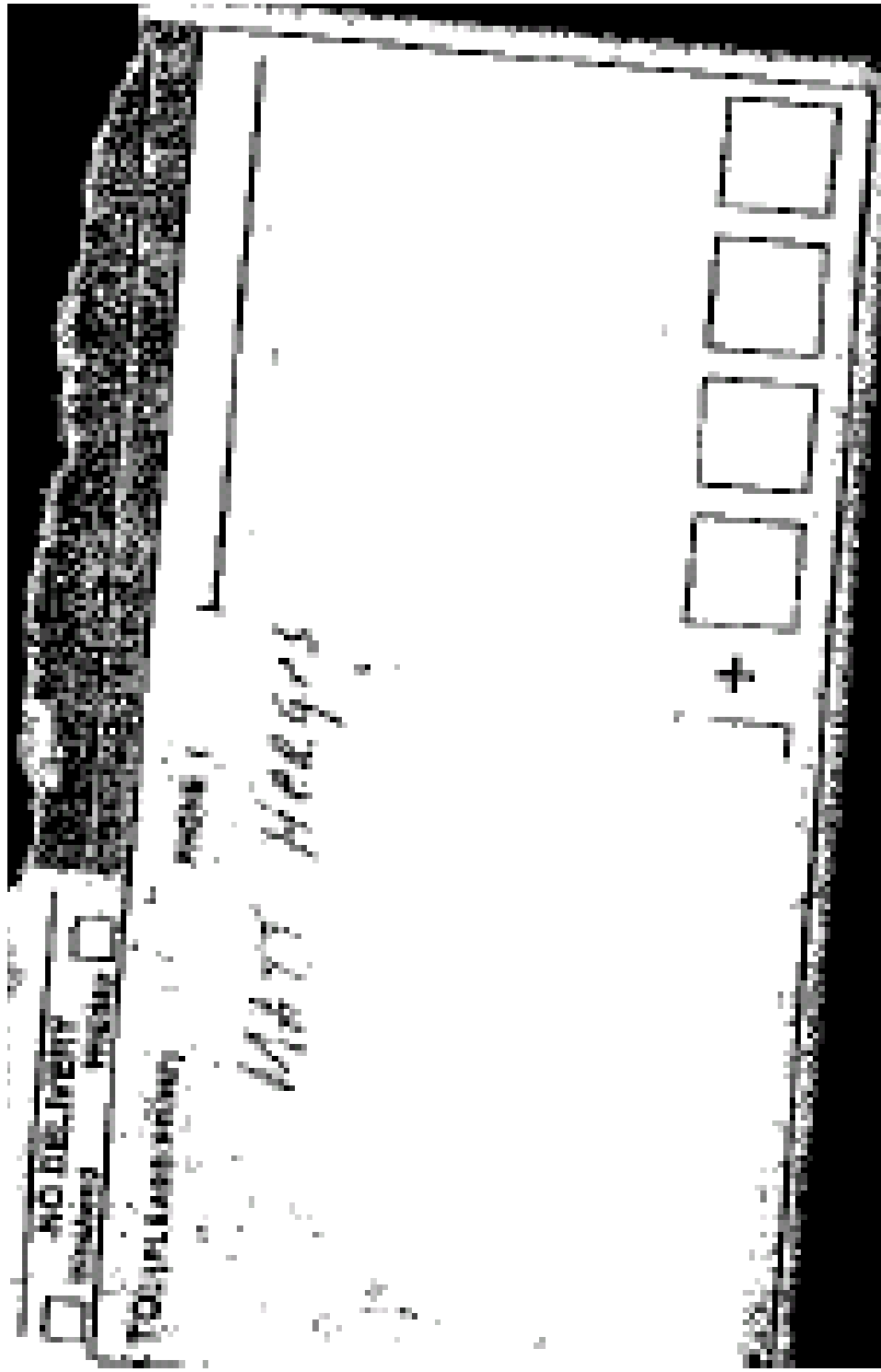
9 0 0 1 2 +

ZIP + 4

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UNITED STATES POSTAL SERVICE®

Post Office To Addressee

ORIGIN (POSTAL USE ONLY)		FLAT RATE ENVELOPES	
PQZIP Code	Day of Delivery	First	Second
Date In	Mo. Day Year	Postage	Return Receipt Fee
Mo. Day Year	Mo. Day Year	\$ 1.75	
Time In	Mo. Day Year		
AM PM	AM PM		
Weight	Int'l Alpha Country Code	COD Fee	Insurance Fee
lbs. ozs.		\$	
No Delivery	Acceptance Clerk Initials	Total Postage & Fees	
Weekend Holiday		\$	

DELIVERY (POSTAL USE ONLY)		EMPLOYEE SIGNATURE	
Delivery Attempt	Time	Employee Signature	
Mo. Day	AM PM		
Delivery Attempt	Time	Employee Signature	
Mo. Day	AM PM		
Delivery Date	Time	Employee Signature	
Mo. Day	AM PM		

**CUSTOMER USE ONLY**

**PAYMENT BY ACCOUNT**  **WAIVER OF SIGNATURE (Domestic Only)**  
 Express Mail Corporate Acct. No. Additional merchandise insurance is void if waiver of signature is requested.

Federal Agency Acct. No. or Postal Service Acct. No. I wish delivery to be made without obtaining signature of addressee or addressee's agent (if delivery employee judges that article can be left in secure location) and I authorize that delivery employee's signature constitutes valid proof of delivery.

**FROM: (PLEASE PRINT)** PHONE ( )

*K. P. Radomski*

**NO DELIVERY**  **CUSTOMER SIGNATURE**  
 Weekend Holiday Customer Signature

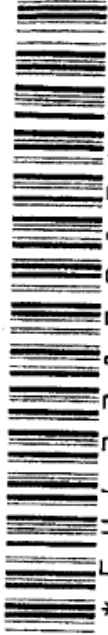
**TO: (PLEASE PRINT)** PHONE ( )

*MATT HERGES*



UNITED STATES POSTAL SERVICE®

# POST OFFICE TO ADDRESSEE



\* E U 6 2 2 8 7 0 1 2 4 U S \*

### ORIGIN (POSTAL USE ONLY)

PO ZIP Code 11444	Day of Delivery <input type="checkbox"/> Next <input type="checkbox"/> Second	Flat Rate Envelope <input type="checkbox"/>
Date In Mo. Day Year 11 14 04	<input type="checkbox"/> 12 Noon <input type="checkbox"/> 3 PM	Postage \$
Time In <input type="checkbox"/> AM <input type="checkbox"/> PM	Military <input type="checkbox"/> 2nd Day <input type="checkbox"/> 3rd Day	Return Receipt Fee \$
Weight lbs. ozs.	Int'l Alpha Country Code	COD Fee
<input type="checkbox"/> No Delivery <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday	Acceptance Clerk Initials	Insurance Fee
Total: Postage & Fees		\$ 11.55

## SEE REVERSE SIDE FOR SERVICE GUARANTEE AND INSURANCE COVERAGE LIMITS

**WAIVER OF SIGNATURE (Domestic Only)** Additional merchandise insurance is void if waiver of signature is requested. I wish delivery to be made without obtaining signature of addressee or addressee's agent (if delivery employee judges that article can be left in secure location) and I authorize that delivery employee's signature constitutes valid proof of delivery.

**NO DELIVERY**  Weekend  Holiday

### CUSTOMER USE ONLY

METHOD OF PAYMENT

Express Mail Corporate Acct. No.

Federal Agency Acct. No. or Postal Service Acct. No.

FROM: (PLEASE PRINT)

PHONE

TO: (PLEASE PRINT)

PHONE

K RADOMSK

KR MARKET

ZIP + 4

7	3	0	1	7	+				
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FOR PICKUP OR TRACKING CALL 1-800-222-1811



WWW.USPS.COM

Customer Copy Label 11-B May 2001

**EXPRESS MAIL**

**Customer Copy**  
Label 11-B, March 2004

UNITED STATES POSTAL SERVICE® **Post Office To Addressee**



ED 374973789 US

**ORIGIN (POSTAL SERVICE USE ONLY)**

PO ZIP Code: \_\_\_\_\_

Day of Delivery:  Next  2nd  2nd Del Day

Scheduled Date of Delivery: Month 11 Day 05 Year 05

Scheduled Time of Delivery:  Noon  3 PM  3rd Day

Military:  Int'l Alpha Country Code: \_\_\_\_\_

Date Accepted: Mo. 11 Day 05 Year 05

Time Accepted:  AM  PM

Flat Rate  or Weight 4.95 lbs. 2.10 ozs.

Postage: \$ 21.05

Return Receipt Fee: \$ \_\_\_\_\_

Insurance Fee: \$ \_\_\_\_\_

COD Fee: \$ \_\_\_\_\_

Total Postage & Fees: \$ 11.05

Acceptance, Emp. Initials: ED

**DELIVERY (POSTAL SERVICE USE ONLY)**

Delivery Attempt: Time  AM  PM Employee Signature: \_\_\_\_\_

Mo. \_\_\_\_\_ Day \_\_\_\_\_

Delivery Attempt: Time  AM  PM Employee Signature: \_\_\_\_\_

Mo. \_\_\_\_\_ Day \_\_\_\_\_

Delivery Date: Time  AM  PM Employee Signature: \_\_\_\_\_

Mo. \_\_\_\_\_ Day \_\_\_\_\_

**CUSTOMER USE ONLY**

**PAYMENT BY ACCOUNT**  
Express Mail Corporate Acct. No. \_\_\_\_\_

Federal Agency Acct. No. or Postal Service Acct. No. \_\_\_\_\_

**WAIVER OF SIGNATURE (Domestic Mail Only)**  
 Additional merchandise insurance is void if customer requests waiver of signature. I wish delivery to be made without obtaining signature of addressee or addressee's agent (if delivery employee judges that article can be left in secure location) and I authorize that delivery employee's signature constitutes valid proof of delivery.

NO DELIVERY  Holiday  Weekend

Mailler Signature: \_\_\_\_\_

TO: (PLEASE PRINT) PHONE ( 602 ) 791-0907

ADAM RIGGS

FROM: (PLEASE PRINT) PHONE ( \_\_\_\_\_ ) \_\_\_\_\_

K. RADOMSKI

ZIP + 4 (U.S. ADDRESSES ONLY. DO NOT USE FOR FOREIGN POSTAL CODES)

\_\_\_\_\_ + \_\_\_\_\_

**FOR PICKUP OR TRACKING**

Visit [www.usps.com](http://www.usps.com)

Call 1-800-222-1811





